United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

F 026

BRIEF OF APPELLANT AND JOINT APPENDIX

In the

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 21,160

J. STERLING HALSTEAD,
Appellant,

v.

REFINED SYRUPS & SUGARS, INC.,
Appellee.

APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

J. Sterling Halstead
3900 Watson Place, N. W.
Washington, D. C.
Attorney for Appellant, Pro Se.

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THE QUESTIONS PRESENTED

In 1954, Appellant, General Counsel and Secretary of Appellee and its parent corporation of the same name was included in a projected Retirement Plan but withdrew his name to facilitate its prompter adoption on the assurance that other appropriate provisions would be made for his retirement.

In 1957, the business of the parent, including all the stock of Appellee was sold to Corn Products Refining Co. and after the sale, on demand of Appellant, such a retirement provision was made by contract between the vendor, now R.S. & S. Liquidating Corp. and Corn Products, and between Appellant and Appellee, respectively under which 980 shares of the stock of Corn Products was retransferred to fund the Pension of $1,000, per month which Appellee agreed to pay Appellant for 9 years. Appellant charges that the increase in value of that *Corn Products stock* has resulted in *unjust enrichment* and *asks equitable relief. Appellee denies the contracts are related.* The record consists of Appellant's verified Complaint and Statements and the contradictory *unverified* statements of Appellee.

In this context, the questions presented are: (a) Did the *District Court err* in finding that there was no issue as to any material fact . . . (b) in deciding that Appellee was entitled to *Summary Judgment.*

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In the

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BRIEF OF APPELLANT

JURISDICTIONAL STATEMENT

The Jurisdiction of the Court is based on *U.S. Code Section 1291.* The Jurisdiction of the lower Court is based on *Title 11, Section 301* et seq. of the *D.C. Code (1951 Ed.)* and *28 U.S.C. Section 2201.*

Rule 56(c) under which Judgment was entered provides as follows:

Rule 56 *Civil Procedure for Federal Courts, Rules Vol. II,*

> "(c) . . . The Judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together the affidavits, if any, show that there are no genuine issues as to material facts and that the moving party is entitled to judgment as a matter of law . . . ."

STATEMENT OF POINTS

The District Court erred:

1. In finding and deciding there was no issue as to any material fact.

2. In deciding that Appellee was entitled to Summary Judgment.

3. In failing to find that Appellee and its parent corporation owning all its stock had been unjustly enriched.

4. In failing to find that Appellant was entitled to relief in equity.

STATEMENT OF THE CASE

Appellant was employed as counsel, General Counsel, Ass't Secretary, and Secretary of the Appellee and in the same capacities for its parent corporation, *Refined Syrups & Sugars Inc. (New York)* from 1942 to 1956, when *Corn Products Refining Company* purchased all of the assets of the latter, including all the stock of Appellee. (Complaint Pars. 1 and 6)

Sometime prior to said purchase by *Corn Products,* these *Refined Syrup Companies* sought to institute a *Retirement Plan* (J.A. 3) for its officers and employees in which Appellant's name was included (J.A. 3) but to avoid delay in making the Plan effective and generally applicable incident to determining the portion of

Appellant's compensation includible under the Plan, Appellant withdrew his name, on the agreement that other appropriate provisions would be made for Appellant's retirement. (J.A. 3)

When the assets of *Refined Syrups & Sugars Inc. (N.Y.)* were transferred to *Corn Products* including all the stock of Appellee, all the officers and employees of both corporations, except, the Chairman of the Board, one of the Vice Presidents and Appellant, were included in the more liberal Pension Plan of *Corn Products.*

On July 15, 1957, Appellant's resignation was requested (J.A. 4) and Appellant thereupon presented his claim to *Refined Syrups & Sugars, Inc. (New York),* the name of which had been changed to *R.S. & S. Liquidating Corp.,* that that corporation provide him with appropriate retirement compensation in accordance with their said agreement.

After extended negotiations among *R.S. & S. Liquidating Corporation, Corn Products Refining Company,* the Defendant and the Plaintiff, pursuant to a contract dated *September 15, 1958,* to provide a fund for the payment of retirement compensation to the Plaintiff, *R.S. & S. Liquidating Corporation* retransferred 980 shares of the capital stock of *Corn Products Refining Company,* previously received from that corporation, to the latter corporation. Subsequently, the Directors of said *Corn Products Refining Company* voted to split its stock two shares for one. On *October 1, 1958,* Defendant signed an agreement with the Plaintiff, providing for the payment to Plaintiff of $1,000 per month, for nine years, subject to certain conditions, restrictions and the stipulation that the Plaintiff would perform certain services drawn after conferences with representatives of the U.S. Bureau of Internal Revenue and with the purpose of making payments pursuant to the terms of said document, deductible for Income Tax purposes by Defendant. (J.A. 4)

The quoted price of 980 shares of *Corn Products Refining Company* stock transferred to that corporation pursuant to the contract of September 15, 1958 with *Refined Syrups & Sugars Inc.*, at the closing of The New York Stock Exchange on that date was $46. per share, a total of $5,020. (J.A. 5)

On February , 1967, Appellee advised Appellant that neither *Corn Products* nor the Appellee, would make any pension payments to Appellant after the last monthly payment provided in the contract dated October 1, 1958. The quoted market price of this stock of *Corn Products* on March 31, 1967, 1960 shares, at $49½ per share, was $96,530, an increase of $51,510. (J.A. 5)

The payments made to Plaintiff after adjustment for dividends and tax benefits accruing therefrom, total less than half said market value of 1960 shares of said *Corn Products Company* stock on March 1, 1967, and unless Defendant is required to continue making pension payments to the Plaintiff, said Defendant and its parent corporation, *Corn Products Company* will have been unjustly enriched to the extent of the difference between the total of said payments, after said adjustment and the said value of 1960 shares of said *Corn Products Company* stock on said date.

Appellant sued in the District Court, setting forth the foregoing facts and praying equitable relief; either (1) that the balance of the fund be applied to the continuance of the pension or, (2) that it be paid over to the Appellant.

Appellee moved for summary judgment on the basis of unsworn statements denying any relation between the contract of September 15, 1958 between *R.S. & S. Liquidating Corp.* and *Corn Products Company* and the contract of October 1, 1958 between Appellee and Appellant.

The District Court entered Summary Judgment in favor of the Appellee. This Appeal followed.

SUMMARY OF ARGUMENT AND ARGUMENT COMBINED

POINT 1. *Appellee raises herein 3 genuine issues as to material facts; in its Motion, Statements, Exhibits and supporting Docments:*

I. Appellee states that the contract between *Corn Products* and *R.S. & S. Liquidating Corporation* and the contract between Appellant and Appellee, to pay Appellant the pension, were separate and unrelated. (J.A. 42)

II. Appellee denies that the two contracts were negotiated together and that 980 shares of *Corn Products* stock were retransferred to that corporation "to provide a fund for Appellant's retirement compensation, contradicting the allegations of Appellant's Complaint and *also in conflict* with the letter to Samuel A. McCain, the General Counsel for *Corn Products Company*, attached to Appellant's Statement in Opposition (JA 44) *Appellee gives no reason for its paying the pension.*

III. Appellee also charges in his Statements that the contract of September 15, 1958 between *Corn Products* and *R.S.&S. Liq. Corp.* was for the purpose of indemnifying *Corn Products* and not for the benefit of Appellant. The contract, a copy of which was attached to Appellee's Request for Admissions, contains the following specific provisions: (See Exhibit attached to Appellee's Statement, J.A. 14)

> "Whereas a claim has been made by an officer of both corporations based on his exclusion from the retirement provisions made for all officers and employees of both corporation, and
>
> Whereas, said Ohio corporation has negotiated a settlement with said claimant . . . satisfactory to the parties concerned for the continued employment of the claimant."

All doubts as to the existence of a genuine issue as to a material fact must be resolved against the party moving for Summary Judgment.

Zig Zag Spring Co. v. Comfort Spring Corp., 89 F. Supp. 410 (D.C. N.J. 1950).

> "Summary judgment may not be given under Rule 56 of the *Rules of Civil Practice* if there is an issue presented as to the existence of any material fact . . ."

Merchant Indemnity Co. v. Peterson, 113 F.2d 4, 6, (2nd Cir.).

> "Upon a motion for Summary Judgment, it is no part of the Court's function to decide the issue of fact but solely to determine whether there is an issue of fact to be tried."

Todelman v. Missouri Kansas Pipe Line, 130 F.2d 1063 (3d. Cir.)

To the same general effect:

Ramsouer v. Midland Valley Co., 44 F. Supp. 523 (D.C. Ark. 1942).

Sarnoff v. Ciaglia, 165 F.2d 167 (3d. Cir.)

In *Myers v. Firemen's Fund Ins.*, 107 U.S. App. D.C. 22, 274 F.2d 84 (1960), this Court reversed the decision of the District Court granting Summary Judgment, though recognizing that the Plaintiff may have recovered all to which she was entitled on a claim for a fire loss against an insurance company the Court said: "It is clear that in view of the settlement she has made, it may be difficult if not impossible to prove that she did not recover for all the claimed damages but she should be given an opportunity to offer proof as well as proof that the insurance company's negligent or deliberate action has not cost her damages for which she has not been compensated."

Also *Harris v. Tobriner*, 113 U.S. App. D.C. 10, 304 F.2d 377 (1962) where this Court reversed a decision on a motion for Sum-

mary Judgment, because the Appellant had not been granted an adequate hearing before the administrative Board regulating licenses for installing electric wiring, etc.

POINT 2. *The facts of Appellant's case, on which he bases his claim, and the applicable law, sustain it and justify the relief prayed, whether* if the claim is based (a) on the text of the two contracts in issue, treating them as one *as they should be treated* or (b) it is based on the law of New York as to "3rd party beneficiary contracts" in that state, which it can be since the contract of September 15, 1967 between *Corn Products* and R.S.&S. Liquidating Corporation, a New York corporation, it was made in New York for the benefit of Appellant; then as a resident of New York.

Contracts for the Benefit of a Third Party, Abbott, *New York Digest,* Vol. 8, section 187(1) and (2). *Auervach v. Grand Nat. Pictures,* 29 N.Y.S.2d 747.

CLEARLY THIS IS A CASE OF UNJUST ENRICHMENT REQUIRING THE IMPOSITION OF A CONSTRUCTIVE TRUST. The following are a few of the authorities sustaining that conclusion:

89 Corpus Juris Secondum, page 1027

> "Generally, any transaction may be the basis for creating a constructive trust where for any reason defendant holds funds which in Equity and good conscience should be possessed by the plaintiff. The forms and varieties of constructive trusts are practically without limit, . . . such trusts being raised, broadly speaking, whenever necessary to prevent injustice . . ." *Amherst College v. Ritch,* 151 N.Y. 283.

Beatty v. Guggenheim Exploration Co., 225 N.Y. 180 122 N.E. 172 (Jan. 1919). Here the employee in his contract of employment, agreed not to accept employment and not to become interested directly or indirectly in any competing business. Only the breach of the latter promise was in issue in this case.

The court held a constructive trust should be imposed, for the benefit of his employer, on the profits from a contract of the defendant with such a competing business. In his opinion, Judge Cardozo said:

> "We think therefore, that aside from the special provisions of the contract the agent became a trustee at the election of the principal . . . A constructive trust is a formula through which, the conscience of Equity finds expression when property has been acquired under circumstances that the holder of the legal title may not in good conscience retain the legal title. Equity converts him into a trustee . . ."

Grand Trunk, etc. Rwy v. Chicago, Indiana etc. Rwy., 131 F. 2d 215, (CCA 7, (1942)). In this case one of five contestants of railroad properties brought suit to recover overpayments of rental made through a mistake in the construction of the lease and after recovering was sued by one of the other co-tenants. The Court said at page 217:

> "There being nothing due it, defendant railroad must have brought its suit for and recovered for plaintiff and the other lessees who had paid more than their shares. It recovered money as a trustee of the plaintiff. The money which it recovered did not belong to it but constituted a trust fund which it held for those lessees who had overpaid their share of rental."

CONCLUSION

The order granting Summary Judgment should be reversed.

Respectfully submitted,

J. Sterling Halstead
Appellant Pro Se

CONTENTS OF JOINT APPENDIX

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

J. STERLING HALSTEAD
v.
REFINED SYRUPS & SUGARS, INC

Case No.
510-67

DOCKET ENTRIES

March 3, 1967 - Complaint, appearance filed.

March 3, 1967 - Summons, copies (1) and copies (1) of Complaint issued, ser. 3/7/67.

March 27, 1967 - Stipulation extending time for deft to answer to and including 4/10/67, filed.

April 10, 1967 - Motion of deft to dismiss or in the alternative for summary judgment; statement; P&A c/m 4/10/67; M.C., appearance of Bernstein, Kelinfeld and Alper, filed.

April 10, 1967 - Request of deft for admissions; exhibit A, B & C; c/m 4/10/67, filed.

April 24, 1967 - Stipulation of counsel extending time for pltf to oppose motion to dismiss and request for admission to and including 5/3/67, filed.

May 3, 1967 - Opposition of plaintiff to motion of defendant to dismiss and for Summary Judgment, Affidavit; Exhibit 1 thru 6, c/m 4/3/67, filed.

May 3, 1967 - Answer of plaintiff to request of defendant for admission. C/M 4/3/67, filed.

June 5, 1967 - Reply of deft to pltf's opposition to defts motion to dismiss and for summary judgment; c/m 6/5/67, filed.

June 7, 1967 - Statement of pltf in opposition to defts' reply to pltfs' statement in opposition to defts motion to dismiss and for summary judgment; exhibit, filed.

June 13, 1967 - Order granting defendant's motion for summary judgment. (N) McGarraghy, J.

June 28, 1967 - Notice of appeal by pltf from order 6/13/67; copy to Mr. Bernstein; filed.

June 28, 1967 - Cost bond on appeal by pltf in sum of $250. with National Surety Corporation approved, filed.

July 26, 1967 - Record on Appeal delivered to U.S.C.A.

July 26, 1967 - Receipt from U.S.C.A. for original Record, filed.

[Filed March 3, 1967]

COMPLAINT IN SUIT TO ESTABLISH A CONSTRUCTIVE TRUST AND TO PREVENT UNJUST ENRICHMENT

I. The Plaintiff respectfully represents to this honorable Court that he is a citizen of the United States and a resident of the District of Columbia and that the Defendant, *Refined Syrups & Sugars, Inc.* is a corporation organized under the Laws of the State of Ohio and qualified to do business in the District of Columbia and is represented in said District by an agent, *C. T. Corporation System*, 918 Sixteenth Street, N.W., Washington, D.C.

II. The purpose of this suit is to establish a constructive trust in personal property, received by *Corn Products Refining Company*, (the owner then and now of all the corporate stock of the Defendant) for the purpose of funding and paying to the Plaintiff, a pension, as a former officer and employee of the Defendant and of *Refined Syrups & Sugars Inc.* (a N.Y. corp.) the former owner of all the

corporate stock of Defendant. The amount involved exceeds ten thousand dollars ($10,000.00).

III. *The facts on which Plaintiff's claim for relief is based are as follows:*

1. Plaintiff served as Counsel or General Counsel and as Assistant Secretary or Secretary of *Refined Syrups & Sugars Inc.* the New York corporation from its reorganization in 1942 until its dissolution in 1958 and in the same capacities for the Defendant, from the time of its organization until April 1958.

2. In 1954 the Defendant, then known as *Flo-Sweet Products Corporation,* with its said parent corporation, *Refined Syrups & Sugars Inc.,* caused to be prepared a *Retirement and Pension Plan* for its officers and employees.

3. Plaintiff was included in said Plan and a *Retirement Pension* for him was included therein.

4. Upon the submission of said Plan to the *Bureau of Internal Revenue,* for a ruling as to the deductibility for Income Tax purposes of payments of Pensions thereunder, the question was raised as to the portion of Plaintiff's compensation which qualified, under the *Internal Revenue Code* and the *Rulings* thereunder, as a basis for a deductible Pension.

5. To avoid delay in the application of the Plan to the other officers and employees of said *Refined Syrups & Sugars Inc.* and its wholly owned Subsidiary *Flo-Sweet Products Corporation,* the Defendant, upon the assurance that other appropriate provisions would be made for his retirement, the Plaintiff consented to the elimination of his name from said Plan and the Plan was thereupon, adopted, approved and put into effect, with Plaintiff's name excluded therefrom.

6. On March 1, 1957, the assets of *Refined Syrups & Sugars Inc.*, the New York corporation, including all the capital stock of the Defendant, was sold and transferred to *Corn Products Refining Company*, now *Corn Products Company*, and all the officers and employees of both corporations, except Charles S. Payson, Chairman of the Board of Directors and Edward W. Freeman, the Vice President who, together, owned or controlled a majority of the outstanding stock of *Refined & Sugars, Inc.* (New York) and with the exception of this Plaintiff, were transferred to Defendant and thereafter included in the more liberal pension plan of said *Corn Products Refining Company*, now *Corn Products Company*.

7. On July 15, 1957, defendants resignation as Counsel and Secretary, was requested, pursuant to advices previously given by said *Corn Products Refining Company*, to become effective upon April 1, 1958.

8. Thereupon, Plaintiff presented to the Directors of *Refined Syrups & Sugars Inc.* (New York), the name of which had been changed to *R.S.&S. Liquidating Corporation*, and to the Defendant, a claim and demand that said corporations provide for the payment to Plaintiff of appropriate retirement compensation.

9. After extended negotiations among *R.S.&S. Liquidating Corporation, Corn Products Refining Company*, the Defendant and the Plaintiff, pursuant to a contract dated *September 15, 1958*, to provide a fund for the payment of retirement compensation to the Plaintiff, *R.S.&S. Liquidating Corporation* retransferred 980 shares of the capital stock of *Corn Products Refining Company*, previously received from that corporation, to the latter corporation. Subsequently, the Directors of said *Corn Products Refining Company* voted to split its stock two shares for one.

10. On *October 1, 1958*, Defendant signed an agreement with the Plaintiff, providing for the payment to Plaintiff of $1,000

per month, for nine years, subject to certain conditions, restrictions and the stipulation that the Plaintiff would perform certain services, drawn after conferences with representatives of the U.S. Bureau of Internal Revenue and with the purpose of making payments pursuant to the terms of said document, deductible for Income Tax purposes by Defendant.

11. Corn Products has advised Plaintiff that neither *Corn Products Company* nor the Defendant will make any pension payments to Plaintiff after the last monthly payment by the Defendant to the Plaintiff provided in said contract dated October 1, 1958.

12. The quoted price of 980 shares of *Corn Products Refining Company* stock transferred to that corporation pursuant to the contract of September 15, 1958 with *Refined Syrups & Sugars Inc.*, at the closing of The New York Stock Exchange on that date was $46. per share and the quoted price of the equivalent number of shares of *Corn Products Company*, on March 31, 1967, 1960 shares, was $49 1/2 per share, or a total of $96,530, an increase of $51.-510.

13. The payments made to Plaintiff after adjustment for dividends and tax benefits accruing therefrom, total less than half said market value of 1960 shares of said *Corn Products Company* stock on March 1, 1967, and unless Defendant is required to continue making pension payments to the Plaintiff, said Defendant and its parent corporation, *Corn Products Company*, will have been unjustly enriched to the extent of the difference between the total of said payments, after said adjustments and the said value of 1960 shares of said *Corn Products Company* stock on said date.

IV. *Wherefore Plaintiff prays judgment:*

1. That appropriate process be issued to the Defendant, *Refined Syrups & Sugars Inc.* requiring that corporation to appear and answer the allegations of this Complaint.

2. That Plaintiff be decreed to be the owner in Equity of the balance of the fund derived from the 980 shares of the corporate stock of *Corn Products Refining Company*, transferred to *Corn Products Refining Company* to provide a retirement pension for the Plaintiff, remaining after the deduction therefrom of the payments heretofore made to the Plaintiff and adjustments for dividends thereon and tax benefits received from said pension payments by Defendant and its parent corporation, *Corn Products Company*.

3. That it be decreed that the Defendant pay said difference to Plaintiff or it pay $1,000 on the 1st day of each and every month to the Plaintiff or to his executors, administrators or testamentary trustees, until said balance, with adjustments for tax benefits and dividends received, shall have been exhausted.

4. That this Court grant such other and further relief as it shall deem necessary and appropriate.

Plaintiff Pro Se

[Filed April 10, 1967]

MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

Comes now the defendant by its attorneys and respectfully moves the Court pursuant to Rule 12(b) of the Federal Rules of Civil Procedure to dismiss the Complaint herein on the grounds that the said Complaint fails to state a claim against this defendant upon which relief can be granted in that on its face it reflects an accord and satisfaction barring the claims asserted, that on its face it shows the claims are barred by the Statute of Limitations and/or laches, and on the further grounds and for the further reasons set forth in the Memorandum of Points and Authorities attached hereto and made a part hereof.

In the alternative the defendant by its attorneys, hereby moves the Court pursuant to Rule 56(b) and (c) of the Federal Rules of Civil Procedure to enter summary judgment for the defendant, in that there is no genuine issue as to any material fact, and that the defendant is entitled to judgment as a matter of law; and in support of said motion, defendant respectfully refers the Court to the Memorandum of Points and Authorities, the statement of Material Facts as to which there is no genuine issue, and the Request for Admissions filed herein.

BERNSTEIN, KLEINFELD & ALPER

By Sheldon E. Bernstein

By Paul H. Mannes
818 18th Street, N.W.
Washington, D. C. 20006
Attorneys for Defendant

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

Defendant incorporates by reference those matters set out within the Requests for Admissions filed herein, and states to the Court that there is no genuine issue as to these material facts.

BERNSTEIN, KLEINFELD & ALPER

By Sheldon E. Bernstein
Attorneys for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS

Briefly summarized insofar as pertinent to the motion, plaintiff alleges that until April 1, 1958, he was employed by the defendant and its predecessor, a New York corporation, as Secretary and General Counsel and that following acquisition of the New York predecessor by Corn Products Company, Corn Products acquired all the assets of the New York corporation in exchange for Corn Products'[1] stock, and plaintiff was discharged. He further alleges that as a result of his then making claims for appropriate retirement compensation the defendant corporation on October 1, 1958, entered into an "employment contract" with him at the rate of $12,000 per year for a period of nine (9) years and that shortly before, on September 15, 1958, the New York predecessor and Corn Products entered into an amendment of their prior agreement of January 21, 1957 whereunder 980 shares of stock of Corn Products which had been previously agreed to be transferred by Corn Products to the New York firm in consideration of the acquisition were to be returned to Corn Products. The purpose of such refund of the 980 shares was in effect to fund or pay for the obligations assumed under the aforementioned contract of October 1, 1958, between plaintiff and defendant. Finally, without challenging or questioning the fairness of the foregoing contractual arrangements when made and apparently having participated in the arrangements themselves, plaintiff now alleges that the value of the Corn Products stock very materially increased between April, 1958, and March, 1967, and that therefore, to permit Corn Products to retain this increment in value would constitute unjust enrichment. Accordingly, plaintiff seeks to have the value of this alleged unjust enrichment impressed with a constructive trust for his personal benefit.

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[1] Defendant is a subsidiary of Corn Products Company.

For the several reasons set out below the complaint clearly fails to state a cause of action, fails to show any unjust enrichment whatsoever, and the complaint is untimely and should be dismissed.

Plaintiff's Claim Is Barred By The
Statute of Limitations or Laches

In effect, what plaintiff seeks is a money judgment awarding him the difference between the value of the 980 shares of Corn Products stock as of September 15, 1958, and as of the present time. If there was any "unjust enrichment", which defendant flatly denies, then that enrichment took place on September 15, 1958, when the rights of the parties were ascertained and fixed. The action is clearly barred by the Statute of Limitations, D.C. Code 12-301.

Even if this were to be considered an action in Equity, plaintiff's claim is clearly barred by laches. Within the nine years since the execution of the agreements complained of, plaintiff has done nothing except collect the sum of $108,000.00 from defendant. Plaintiff has done nothing to change the situation and defendant has changed its position by transferring a substantial sum of money to him. As was stated by our Court of Appeals,

> "No rule is better established than that courts of equity will not enforce stale demands or, as was said by Lord Camden: 'Nothing can call forth this court into activity but conscience, good faith, and reasonable diligence,' or by Mr. Justice Brewer: 'No doctrine is so wholesome, when wisely administered, as that of laches. *** It is a doctrine received with favor, because its proper application works out justice and equity, and often bars the holder of a mere technical right, which he has abandoned for years, from enforcing it when its enforcement will work large injury to many.'" *Hastings v. Coe*, 69 App. D.C. 94, 96 – 99 F.2d 129, 131 (1938).

Summary judgment may properly be entered for defendant upon the defense of limitations. *Dam v. General Electric Co.*, 265 F.2d 612 (9th Cir. 1958); *Kohner v. Union Pac. R. Co.*, 225 F.2d 272 (10th Cir. 1955); *Kithcart v. Metropolitan Life Ins. Co.*, 150 F.2d 997 (8th Cir. 1945); *Ayres v. Davidson*, 285 F.2d 137 (5th Cir. 1960); *Hartley Pen Co. v. Lindy Pen Co., Inc.*, 16 F.R.D. 141 (S.D. Cal. 1954). *Cf. Reynolds v. Needle*, 77 U.S. App. D.C. 53, 132 F.2d 161 (1942).

Summary judgment is likewise proper when it appears as a matter of law plaintiff has been guilty of laches. *Dam v. General Electric Co., supra*[2]; *Dixon v. American Telephone and Telegraph Co.*, 159 F.2d 863 (2d Cir. 1947); *Hunt v. Pick*, 240 F.2d 782, 787 (10th Cir. 1957); *Carroll v. Pittsburgh Steel Co.*, 100 F. Supp. 749 (W.D. Pa. 1951). As Judge Frank pointed out in the *Dixon* case:

> "The facts bearing on the issue of laches are wholly within plaintiff's knowledge; nothing that could be learned at a trial could add to the data bearing on that issue; with respect thereto, he is in nowise dependent 'on what he can draw out of' the defendants. Had there been a trial, none of the defendants, by their testimony, would have contributed anything concerning the reasons for the delay; if, at a trial, his testimony had been in accord with his affidavits and had been believed, nevertheless dismissal for laches would have been necessary. As a trial would have involved no question of credibility, our precedents are not in point. Since, as to laches, there was no issue of fact but only one of 'law,' the vice of 'trial by affidavits' is here absent, and the summary judgment must be affirmed." 159 F.2d at 864.

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[2]This case holds also that a claim for unjust enrichment is subject to the Statute of Limitations.

On The Face of The Complaint It Appears That There Has Been An Accord And Satisfaction Barring Plaintiff's Claim For All Time

In paragraphs 8 and 9 of the complaint plaintiff pleads that in 1957 and 1958 he made "a claim and demand that said corporations provide for the payment to plaintiff or appropriate retirement compensation" and thereafter he signed an agreement with defendant for the payment to him of the sum of $108,000.00 over a nine year period. The agreement of September 15, 1958, between the owner of defendant's corporate stock and plaintiff's former employer, which was signed by plaintiff contains the following recitals:

> "WHEREAS, the entire outstanding stock of Refined Syrups & Sugars, Inc., an Ohio corporation, which had been owned by R. S. & S. since the organization of said Ohio corporation in 1946, was included among the assets transferred to C. P. on March 15, 1957, pursuant to the terms of said contract dated January 21, 1957, and thereafter said Ohio corporation took over and is now operating the business of R. S. & S. as well as its own as a subsidiary of C.P.; and
>
> "WHEREAS, a claim has been made by an officer of both corporations based on his exclusion from the retirement provisions made for all officers and employees of both corporations; and
>
> "WHEREAS, said Ohio corporation has negotiated a settlement with said claimant which embodies a settlement of said claim satisfactory to the parties concerned, providing for the continued employment of the claimant; and
>
> "WHEREAS, C.P. contends that, as a result of said settlement, it is entitled to indemnification pursuant to paragraph 13 of said contract dated January 21, 1957."

The Internal Revenue Service letter of September 3, 1958, alluded to in the complaint, also points out:

> "All of the officers and salaried employees of RSS were taken over by ORSS, but soon thereafter, in September 1957, it requested Mr. J. S. Halstead, who had served both companies over many years, to discontinue his services as Secretary and General Counsel. The officers and salaried employees of both companies, except Mr. Halstead, were covered under a Retirement Plan which ORSS continued in effect. Upon being advised of the discontinuance, Mr. Halstead, upon severing his services with ORSS on March 31, 1958, presented a claim to that company for retirement and severance benefits similar to those which applied to the said officers and employees under its Retirement Plan. Negotiations thereunder have resulted in a proposed settlement between Mr. Halstead and ORSS, as reflected in a copy of Agreement submitted with the application for a ruling (Exhibit A), the contents of which have been agreed upon fully, but the formal signing has been deferred pending the outcome of the ruling requested. The principal provision covered therein is that ORSS will have undertaken to engage the services of Mr. Halstead on a retainer basis at the rate of $12,000 per annum, payable monthly, beginning at April 1, 1958 for a period of nine years."

Clearly, there has been an accord and satisfaction. Plaintiff's claim has been extinguished. This doctrine has long been the law of the District of Columbia. In *Ansberry v. Harrash,* 65 App. D.C. 80, 81, 80 F.2d 381, 382 (1935) Justice Van Orsdel opined:

> "'The rule is equally well established that, where a claim is unliquidated, or honestly in dispute, the payment and acceptance of a less sum than claimed operates as an accord and satisfaction, the compromise being a good consideration for the concession made.'

[Filed April 10, 1967]

REQUEST FOR ADMISSIONS

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, defendant, by its attorneys, hereby requests plaintiff to admit within ten (10) days after service of this request, for the purposes of this action only, the truth of the following facts:

1. That the copy of a contract dated September 15, 1958, between Corn Products Refining Company and R. S. & S. Liquidating Corporaton attached hereto as Exhibit A is a true and correct copy of the contract referred to in paragraph numbered 9 of the Complaint herein.

2. That the copy of a contract dated October 1, 1958, between Refined Syrups & Sugars, Inc. and J. Sterling Halstead attached hereto as Exhibit B is a true and correct copy of the contract referred to in paragraph numbered 10 of the Complaint herein.

3. That the foregoing two contracts are the sole contractual arrangements through which plaintiff's claim derive or could be founded.

4. That the copy of a letter dated September 3, 1958, attached hereto as Exhibit C, from the Office of the Commissioner of Internal Revenue to Refined Syrups and Sugars, Inc., is the ruling from the Commissioner of Internal Revenue issued following an application therefor concerning Exhibit B attached hereto.

5. That the said J. S. Halstead described in Exhibit C attached hereto, the said J. Sterling Halstead mentioned in Exhibit B attached hereto, and the J. Sterling Halstead attesting to the signature of R. S & S. Liquidating Corporation on page 3 of Exhibit A attached hereto are one and the same person, namely the plaintiff.

6. That the facts stated in Exhibit C attached hereto are true.

7. That in the year 1957 and until March 31, 1958, plaintiff was employed as the general counsel of a New York and an Ohio Corporation both known as Refined Syrups and Sugars, Inc.

BERNSTEIN, KLEINFELD & ALPER

By Sheldon E. Bernstein
Attorneys for Defendant

[Certificate of Service]

EXHIBIT A

THIS AGREEMENT, made this 15th day of September, 1958, by and between CORN PRODUCTS REFINING COMPANY (hereinafter called "C.P."), a New Jersey corporation, and R. S. & S. LIQUIDATING CORPORATION, formely Refined Syrups & Sugars, Inc. (hereinafter called "R. S. & S."), a New York corporation,

WITNESSETH:

WHEREAS, on March 15, 1957, R. S. & S. transferred and delivered to C.P. all its assets, business and properties, as more fully stated in a contract between said corporations dated January 21, 1957, pursuant to said contract, upon certain express warranties; and

WHEREAS, the entire outstanding stock of Refined Syrups & Sugars, Inc., an Ohio corporation, which had been owned by R. S. & S. since the organization of said Ohio corporation in 1946, was included among the assets transferred to C.P. on March 15, 1957, pursuant to the terms of said contract dated January 21, 1957, and thereafter said Ohio corporation took over and is now operating the business of R. S. & S. as well as its own as a subsidiary of C.P.; and

WHEREAS, a claim has been made by an officer of both corporations based on his exclusion from the retirement provisions made for all officers and employees of both corporations; and

WHEREAS, said Ohio corporation has negotiated a settlement with said claimant which embodies a settlement of said claim satisfactory to the parties concerned, providing for the continued employment of the claimant; and

WHEREAS, C.P. contends that, as a result of said settlement, it is entitled to indemnification pursuant to paragraph 13 of said contract dated January 21, 1957,

NOW, THEREFORE, in consideration of these premises, it is agreed that;

1. Paragraph 2 of said contract dated the 21st day of January, 1957, between C.P. and R. S. & S. be and the same hereby is amended to read as follows:

> "Corn Products shall, subject to the terms and conditions of this Agreement, in exchange for said transfer and delivery by R. S. & S. of its business and assets, deliver to R. S. & S. certificates for an aggregate of one hundred twenty-seven thousand, three hundred eight (127,308) shares of Corn Products' Common Stock registered in such names as R. S. & S. shall designate. Such certificates shall be in denominations of 100 shares each, or less than 100 shares where necessary, but in no case shall Corn Products be required to issue a certificate for less than one whole share."

2. R. S. & S. will cause certificates representing nine hundred eighty (980) shares of the stock of C.P. to be surrendered to C.P. for cancellation on or before October 3rd, 1958.

3. C.P. and Refined Syrups & Sugars, Inc. will execute and deliver to R. S. & S. a release accepting the surrender of said certificate as full satisfaction and discharge of R. S. & S. from any and all liability in respect of said claim under said contract of January 21, 1957.

IN WITNESS WHEREOF, the parties have duly executed this agreement the day and year first above written.

R. S. & S. LIQUIDATING CORPORATION

By /s/

ATTEST:

/s/ J. Sterling Halstead

CORN PRODUCTS REFINING COMPANY

By /s/

ATTEST:

/s/

[Jurats]

EXHIBIT B

THIS AGREEMENT made this 1st day of October, 1958 between REFINED SYRUPS & SUGARS, INC., an Ohio corporation, hereinafter referred to as "Refined", and J. STERLING HALSTEAD, hereinafter referred to as "Halstead":

WITNESSETH:

WHEREAS, Halstead has represented Refined as Counsel as a member of various partnerships since August 27, 1946, and has acquired special knowledge and experience invaluable in advising the corporation, particularly in matters relating to the Sugar Industry; and

WHEREAS, Halstead has rendered unusually effective and valuable services to Refined during said period; and

WHEREAS, Refined is desirous that Halstead's services shall continue to be available to it in the future;

NOW, THEREFORE, it is agreed between the parties as follows:

1. Under the direction of the General Counsel of Refined and/or the General Counsel of Corn Products Refining Company, Halstead will advise Refined in such matters and at such times as Refined may reasonably request.

2. Refined will pay Halstead a retainer of Twelve Thousand ($12,000.00) Dollars per annum, payable monthly, beginning on the first day of April, 1958, for a period of nine years. In the event of the death of Halstead during the term of this contract Refined will pay the sums specified to Halstead's designated beneficiary for the remainder of the term of the contract.

3. Such compensation shall cover the services of Halstead up to 250 hours of such services per annum, but if Halstead is not called upon to render any services it shall not be deemed to constitute a breach of this Agreement, or affect the compensation payable under paragraph 2 hereof.

Except as provided in the foregoing paragraph 2, all compensation and payments provided for herein shall cease upon Halstead's death. Halstead's right to receive the payments provided for in paragraphs 1 and 2 hereof shall also cease and this contract and all of Halstead's rights thereunder shall terminate at once if at any time he shall engage in other regular employment for compensation which in the opinion of the Directors of Corn Products Refining Company, determined by the vote of a majority thereof, is inconsistent with his obligations hereunder or requires devotion thereto of so much of his time and efforts as to be detrimental to his employment and render him unavailable for the services contemplated by this agreement. It is, however, the intention of this agreement that after Halstead's retirement occasional engagements for special and individual services on a fee basis or holding public or official positions shall not be deemed to constitute engaging in other regular employment for compensation so long as they do not in the opinion of the Di-

rectors of Corn Products Refining Company prevent him from being available for and rendering such services to Refined as are herein provided for and are not contrary to the interests of Refined. Halstead's rights and the rights of his designee or estate to receive payments hereunder, including those provided for in paragraph 2 as well as in paragraph 1, shall cease if Halstead shall engage in employment or activities which in the opinion of the Directors of Corn Products Refining Company, as determined by the vote of a majority thereof, are contrary to the best interests of Refined.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

REFINED SYRUPS & SUGARS, INC.

By /s/ Frederic A. Davidson
President

/s/ J. Sterling Halstead

ATTEST:

/s/
Asst. Secty.

[Jurats]

EXHIBIT C

U.S. TREASURY DEPARTMENT
Washington 25

Sep 3, 1958

Refined Syrups & Sugars, Inc.
Foot of Vark Street
Yonkers, New York

Gentlemen:

This is in reply to your letter of August 7, 1958 requesting a ruling concerning the deductibility, for Federal income tax purposes, of compensation payments payable to an individual under a proposed agreement with him, under the circumstances therein described.

The factual statements contained in your letter, with the enclosures, relative to the transaction involved disclose that on March 15, 1957 all of the assets of Refined Syrups & Sugars, Inc., a New York corporation (hereinafter referred to as RSS), inclusive of the capital stock of two wholly-owned subsidiary companies, were transferred to Corn Products Refining Company, New York, New York, (hereinafter referred to as CP) in a nontaxable exchange, under section 368(a)(1)(C) of the Internal Revenue Code of 1954, for 128,-288 shares of its common stock, together with the assumption by CP of the liabilities and obligations of RSS as specified on pages 1 and 2 of the "Acquisition Agreement" dated January 21, 1957. Your corporation, organized under the laws of Ohio, (hereinafter referred to as ORSS) was one of the two subsidiaries of RSS. Thereupon, the same assets, except the capital stock of the subsidiary corporations owned by RSS, and advances or accounts receivable due from them, and the patents, trade names, and trade-marks of RSS were conveyed by CP to ORSS as contributions to its capital, with ORSS assuming the same liabilities which CP had assumed from

RSS, except loans owing to Metropolitan Life Insurance Company and Manufacturers Trust Company. As an operating subsidiary of CP, ORSS has combined its business operations with those of RSS.

All of the officers and salaried employees of RSS were taken over by ORSS, but soon thereafter, in September 1957, it requested Mr. J. S. Halstead, who had served both companies over many years, to discontinue his services as Secretary and General Counsel. The officers and salaried employees of both companies, except Mr. Halstead, were covered under a Retirement Plan which ORSS continued in effect. Upon being advised of the discontinuance, Mr. Halstead, upon severing his services with ORSS on March 31, 1958, presented a claim to that company for retirement and severance benefits similar to those which applied to the said officers and employees under its Retirement Plan. Negotiations thereunder have resulted in a proposed settlement between Mr. Halstead and ORSS, as reflected in a copy of Agreement submitted with the application for a ruling (Exhibit A), the contents of which have been agreed upon fully, but the formal signing has been deferred pending the outcome of the ruling requested. The principal provision covered therein is that ORSS will have undertaken to engage the services of Mr. Halstead on a retainer basis at the rate of $12,000 per annum, payable monthly, beginning at April 1, 1958 for a period of nine years.

Upon the filing of the claim by Mr. Halstead with ORSS, demand was made by CP or RSS for an adjustment of the capital stock shares paid under the warranty provisions of the original merger agreement by which a portion thereof would be transferred back from RSS. Negotiations thereon have resulted in a tentative agreement being reached which calls for this adjustment, which agreement is expected to be formalized. The income tax consequences of such pending adjustment were covered in a ruling issued under date of July 14, 1958 (T:R:R-BMA) in which it was held that gain or loss

will not result therefrom either to RSS, to the stockholders of RSS, or to CP.

Under the provisions of the proposed agreement between ORSS and Mr. Halstead, a liability will be incurred by ORSS for the payment of the said compensation to Mr. Halstead on an annual basis in consideration for the rendition of services by him over the nine-year period. Such agreement is construed as being separate and distinct from the aforementioned transaction consummated under date of March 15, 1957 between CP and RSS, as well as upon the forthcoming adjustment of the number of shares of capital stock passing between them thereunder, inasmuch as ORSS was not a party thereto or directly affected thereby. The indicated liability involves an annual expense of $12,000, ordinary and necessary to ORSS in carrying on its trade or business, as contemplated under the provisions of section 162(a) of the Internal Revenue Code of 1954 and section 1.162-7 of the Income Tax Regulations thereunder, the amount of which is accurable on the corporate records. Consistent therewith, a deduction is allowable for such expense in the taxable year or years in which paid or incurred, depending upon the method of accounting employed, provided that the amount thereof is determined to be reasonable and covers services actually rendered.

Very truly yours,

/s/
Chief, Corporation Tax Branch

[Filed May 3, 1967]

STATEMENT IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND FOR SUMMARY JUDGMENT UNDER 12 (b) AND RULE 56(b) AND (c) OF THE RULES OF CIVIL PROCEDURE WITH POINTS AND AUTHORITIES AND SUPPORTING AFFIDAVIT.

Comes now the Plaintiff, J. Sterling Halstead, pro se, and respectfully shows the Court as follows:

Plaintiff, General Counsel and Secretary for many years of the business now owned and operated by the Defendant and its parent corporation, *Corn Products Company*, sues in Equity to impress a trust on the residue of a fund provided by Plaintiff's former employer and owner of this business, *Refined Syrups & Sugars, Inc. (N.Y.)*, for the payment of a pension to Plaintiff.

Defendant has been performing the contract, pursuant to an agreement made for tax purposes, providing for Plaintiff's employment for (9) nine years at a compensation of $1,000. per month and the rendering of up to 250 hours services per year, without additional fee. Defendant has been utilizing Plaintiff's services whenever it elected to do so and taking advantage of his knowledge and experience whenever it chose. The 9-year period ended with March 1967.

To induce the Defendant and its parent corporation, Corn Products Company, to make these payments, Plaintiff's former employer, *Refined Syrups & Sugars Inc. (N.Y.)* on September 15, 1958, had made an agreement with *Corn Products* under which the former retransferred 980 shares of the latter corporation, previously transferred to said New York corporation as part of the consideration for the sale and transfer of all its assets, including the stock of the Defendant, to *Corn Products.*

The value of this 980 shares of stock of *Corn Products* has doubled during the 9 years.

Plaintiff asks that the Court exercise its Equitable powers to prevent unjust enrichment and to direct the application of this increase to Plaintiff's pension, the sole purpose for which the stock was originally transferred, as appears clearly in said agreement of September 15th.

Unless this relief is granted *Corn Products* and the Defendant will realize more than 100% profit as a result, solely, of this agreement to pay this pension to Plaintiff for which neither Defendant nor *Corn Products* have given any consideration or rendered any services.

CLEARLY THIS IS A CASE OF UNJUST ENRICHMENT REQUIRING THE IMPOSITION OF A CONSTRUCTIVE TRUST. The following are a few of the authorties sustaining that conclusion:

89 Corpus Juris Secondum, page 1027

> "Generally, any transaction may be the basis for creating a constructive trust where for any reason defendant holds funds which in Equity and good consscience should be possessed by the plaintiff. The forms and varieties of constructive trusts are practically without limit, . . . such trusts being raised, broadly speaking, whenever necessary to prevent injustice . . .". *Amherst College v. Ritch*, 151 N.Y. 283.

Beatty v. Guggenheim Exploration Co., 225 N.Y. 180, 122 N.E. 172 (Jan. 1919). Here the employee in his contract of employment, agreed not to accept employment and not to become interested directly or indirectly in any competing business. Only the breach of the latter promise was in issue in this case.

The court held a constructive trust should be imposed, for the benefit of his employer, on the profits from a contract of the defendant with such a competing business. In his opinion, Judge Cardozo said:

> "we think therefore, that aside from the special provisions of the contract the agent became a trustee at the election of the principal . . . . A constructive trust is a formula through which the conscience of Equity finds expression when property has been acquired under circumstances that the holder of the legal title may not in good conscience retain the legal title. Equity converts him into a trustee . . . ."

Grand Trunk etc Rwy v. Chicago, Indiana etc. Rwy., 131 F.2d 215, (CCA 7, (1942)). In this case one of the 5 co-tenants of railroad properties brought suit to recover overpayments of rental made through a mistake in the construction of the lease, and after recovering, was sued by one of the other co-tenants. The Court said at page 217:

> "There being nothing due it, defendant railroad must have brought its suit for and recovered for plaintiff and the other lessees who had paid more than their shares. It recovered money as a trustee of the plaintiff. The money which it recovered did not belong to it but constituted a trust fund which it held for those lessees who had overpaid their share of rental."

Defendant's Motion and supporting papers restate with errors and in a garbled fashion many of the salient facts alleged in Plaintiff's Complaint herein:

(a) Any mention of the agreement dated September 15, 1958, which is the origin and source of Plaintiff's claim is deferred until after the agreement signed Oct. 1, 1958. The only importance of the latter document is to make the pension, provided for in the earlier agreement, deductible for Income Tax purposes. For an understanding of this transaction the Court is respectfully referred to paragraphs 9 and 10 of Plaintiff's Complaint where the facts of the various transactions are stated accurately and in proper chronological order.

(b) Defendant, in its motion also erroneously assumes, as a basis for the arguments and authorities he cites, that Plaintiff's claim rests on the contention that these contracts have been breached. Such is not the case. Plaintiff seeks to have applied for his benefit a fund which none of the parties anticipated and the terms of the agreements do not provide for. Emphasizing his reliance on this breach of contract theory, he asks Plaintiff to admit that the photographic copies of these documents which submits accurately reflect the provisions which they contain.

PLAINTIFF DOES NOT SEEK TO ATTACK THESE CONTRACTS BUT TO RECOVER A SURPLUS REMAINING AFTER THEIR PERFORMANCE WHICH IN EQUITY WOULD CONSTITUTE UNJUST ENRICHMENT TO THE DEFENDANT AND ITS PARENT COMPANY, IF THEY WERE ALLOWED TO RETAIN IT.

In line with the erroneous theory that Plaintiff is suing at law for breach of contract, *the first point* which Defendant urges is that Plaintiff's recovery is barred by the *Statute of Limitations.*

The law has been clear in the District of Columbia, since early times, that the Statute of Limitations does not apply to suits in Chancery:

Peters v. Sutter, 2 MacArthur (D.C. Rep.) (Sept. 1876). The Supreme Court of the District there stated:

> "The question here presented has been often discussed and decided by the Courts of Maryland. We have uniformly held that the Statute does not apply to suits in Chancery, the recovery of money secured by a mortgage, or equitable line, ***" citing cases.

In *Halliday v. Halliday,* 56 Appeals D.C. 179, 1926, the Court said (page 183):

> "Finally it is urged that relief in this case is barred by laches of the appellee, 12 years having elapsed between the execution of the deed in queston and the filing of the Bill. In some jurisdictions it has been held that Equity will follow the Statute of Limitations but this has never been the rule in this jurisdiction. Whether the laches may be set up will depend on the particular circumstances in each case."

The next contention of the Defendant is that Plaintiff has been guilty of *laches. This is based on an unsound premise and several erroneous statements of fact:*

First: He argues that the breach of the contract on which he erroneously assumes Plaintiff is suing, occurred 9 years ago or at sometime which he does not fix. *The fact is that the extent of the unjust enrichment resulting from these contracts could not be determined until after March 1, 1967* when the payment of the annuity to Plaintiff was terminated by the Defendant. (See letter attached to the accompanying affidavit), and the amount of the fund remaining determined. The Defendants' argument that Plaintiff has been guilty of laches cannot be sustained because Plaintiff did not bring suit prior to that date.

Second: Defendant next charges on page 2 of his brief:

> "Plaintiff has done nothing to change the situation and Defendant has changed its position by transferring a substantial sum of money to him."

This statement ignores the fact that the distributions to which Defendant refers actually came from Plaintiff's former employer, *Refined Syrups & Sugars Inc. (N.Y.)* and that not a dollar of those distributions were contributed by the Defendant or *Corn Products Company.* Defendant's claim that it has suffered financially as a result of Plaintiff's failure to bring a suit at an earlier date, is not true unless Defendant is complaining that its profit would have been greater

if Plaintiff had acted earlier. *The provision at the end of the agreement of Oct. 1, 1958, giving the Board of Directors of Corn Products practically unlimited power to discontinue Plaintiff's pension,* which was inserted at the last minute over Plaintiff's strenuous objection, *may reveal why Defendant argues that it has been prejudiced by the delay.*

It should be pointed out parenthetically that in view of this unlimited power given to the *Directors of Corn Products* in the last paragraph of that agreement of October 1, 1958, to stop the pension, the contract so-called was actually nothing more than a unilateral option on Plaintiff's services for nine years, not actually binding the Defendant at all.

Third: This further inaccurate statement appears on page (2) of Defendant's brief:

> "without challenging or questioning the fairness of the foregoing arrangement when made and apparently having participated in the arrangements themselves, Plaintiff now alleges that the value of Corn Products stock etc."

The fact is that in May 1963, when it first became apparent to Plaintiff that the rise in the market price of Corn Products stock indicated that Defendant and *Corn Products* might realize a large profit when the payments of the annuity provided for, were completed, he so advised the General Counsel of *Corn Products* who is also the General Counsel for the Defendant, and has continued to press his claim ever since. Copies of this correspondence attached to Plaintiff's affidavit are submitted herewith.

In the light of all the foregoing, the argument that Plaintiff is barred from recovery in this action because the agreement of October 1, 1958 constituted "an *accord and satisfaction*" does not deserve a further answer. As heretofore stated and emphasized, Plaintiff's case

does not rest on challenging the binding character of that agreement but is a suit to impress a constructive trust on the unexpected increase in the fund provided by Plaintiff's former employer, *Refined Syrups & Sugars Inc.* of New York for Plaintiff's pension, to which neither the Defendant nor its parent corporation, *The Corn Products Company, in Equity*, have any just claim.

J. Sterling Halstead, pro se.

Affidavit of Plaintiff

DISTRICT OF COLUMBIA, To Wit,

J. Sterling Halstead, Plaintiff herein, being duly sworn deposes and states as follows:

1. I have read the *Complaint* herein and the *Statement in Opposition to the Motion for Dismissal* and the statements therein contained are true to the best of my knowledge, information and belief, with the exception of a typographical error in paragraph 12 of the Complaint wherein the market value of Corn Products Stock on March 31, 1967 is stated. The date should have been March 1, 1967. The market price listed was the price on March 1.

2. Attached hereto are copies of my letters written to the General Counsel of *Corn Products Company,* who is also the General Counsel to the Defendant, Refined Syrups & Sugars, Inc., (Ohio) with reference to the increase in value of *Corn Products Stock* and extending my pension to give me the benefit of that increase, dated respectively:

May 10, 1963,
July 13, 1963,
July 26, 1963,
October 19, 1965.

3. There are also attached hereto photo copies of letters to me:

(a) From the General Counsel of *Corn Products Company* dated July 18, 1963, in reply to my letter of July 13th.

(b) From the Comptroller, of Defendant, Refined Syrups & Sugars Inc. (Ohio) stating that the pension payment to me of March 1, 1967, completed the performance of the Defendants' contract with me.

[Jurat]

3900 Watson Place, N.W.
Washington 16, D. C.
May 10, 1963.

Warren S Adams, Esq., General Counsel,
Corn Products Company,
717 Fifth Avenue,
New York 22, N. Y.

Dear Warren:

Before the deepening dust and the accumulating files of more recent matters bury completely the records of the Corn Products-Refined Syrups reorganization, I want to add to your burdens, with apologies some more problem. I am writing you at this time because from now on it will become increasingly difficult to do anything about it.

You no doubt remember, and participated with Sam, in the situation which developed after the closing about the retirement provision which R.S.&S. failed to make for me. To recall it to your mind, I was the only officer of that corporation not so provided for because my office which was really a legal department, had been maintained as an independent unit for reasons both of convenience and economy taxwise and to service the interests of the controlling stockholder in handling problems with management.

The arrangement worked out in 1958 by the retransfer of 980 shares of Corn Products stock forming part of the consideration for

the transfer of R.S.&S. assets made the most favorable provision for me which the then value of that stock warranted and approximated the pensions previously provided for the other senior officers of R. S.&S. with one exception: all R.S.&S. pensions were for life, mine terminates in 1967.

There is also another difference, my contract provides for the continuance of the payments even after the death of both my wife and me.

Developments since this agreement was made have emphasized the seriousness of the problem of having these payments and when I am 72 and have also developed the fact that neither my wife or I have anyone to whom we wish to will the unpaid balance should we both die before the payments end. For these reasons, I would like very much to amend this contract at this time to provide that:

(1) the payments in the event of my death or the death of my wife, be reduced to $700 per month.

(2) the payments discontinue on the death of the survivor.

(3) the payments not terminate in 1967 but continue in accordance with (1) and (2).

This might mean the payment by Corn Products (that is R.S. &S. Ohio) of a larger total than originally calculated. It could, however, result in a substantial savings. There is still $46,000 to be paid, $12,000 a year and I am nearly 69 (August) and my wife 66.

Although the arrangement would probably not stand the test of the actuarial tables, it has some features and advantages that recommend it.

The 980 shares of the stock of Corn Products Refining Company transferred by R.S.&S. stockholders to fund my pension contract was worth in yesterdays market nearly $109,000. As compared with the market value at the contract was signed of $43,000. Corn Products

stockholders have already profited, as a result of the signing of those contracts and the retransfer of that stock to the extent of $66,000. This, it seems to me should more than offset the amount of any additional payments which might have to be made under my contract as so amended.

Moreover under the tax law in some cases are treated as accounting units for income tax purposes and this profit could cause trouble. It would improve the picture taxwise if the total amount to be ultimately to be paid was not fixed and dependent upon two lives as to the time of payment.

I could also urge the usual arguments offered in support of pensions, but you are no doubt familiar with all of them. I can, however, appropriately point out, I think, that of all the R.S.&S. people, I probably took the largest part in getting the C.P.-R.S.&S. contract through and that the contract has proved to be a good deal for everyone but me. Also, my work during the last four years in winding up and successfully settling R.S.&S. income tax liabilities and other disputed claims has benefitted everyone substantially and has cost Corn Products nothing.

I am sending a copy of this letter to Sam in case you have occasion to talk to him about it.

Sincerely,

3900 Watson Place, N.W.
Washington 16, D. C.

July 13, 1963.

Warren S. Adams, 2nd, Esq.
Vice President and General Counsel
Corn Products Company
717 Fifth Avenue
New York 22, N.Y.

Dear Warren:

Thank you very much for your letter and the sympathetic attention given my request. I have gotten together some actuarial figures and they are enclosed. You will note that they are based on 48% of the payments to be made by Refined Syrups & Sugars Inc. (Ohio), as was the case in computing the cost of the present contract due to the tax deductibility of the payments per the ruling of the U.S. Treasury dated September 3, 1958.

As to my taking advantage of your kind offer to arrange an opportunity for me to discuss the change in the contract with the head of the Financial Department of your company, I feel, I would first have to take up the matter with Mr. Payson as the present contract was the result of a personal conference he had with Mr. Brady and I would rather not bring him into this again unless I have to.

I would first like to document what I said in my prior letter as to the taxability to Corn Products of the profit on the existing contract, as applied to the actuarial figures.

I want to preface this, however, by stating that this situation has arisen as a result of the substitution of the 980 shares of Corn Products stock for the cash payment offered R.S.&S. stockholders in accordance with the plan which I devised. This change I believe was made at the suggestion of your tax counsel. Unhappily, the plan as so revised, did not take into consideration that the transaction might result in a profit to Corn Products or take notice of the fact that the Bureau had left the door open to such a contention in its

ruling. The latter appears clearly from the following quotations from their Rulings on the revised plan date respectively, July 14, 1958 and September 3, 1958:

> "(1) The proposed surrender by the escrow agent for the stockholders of RSS, of stock of Corn Products to the corporaton for cancellation, will not result in gain or loss, to RSS, to RSS stockholders, or to Corn Products."
>
> "Such agreement is construed as being separate and distinct from the aforementioned transaction consummated under date of March 15, 1957 ***".

It is a matter of simple arithmetic to prove that Corn Products is better off than it would have been if it had not entered into this contract providing for payment of retirement compensation to me, to the extent of approximately $80,000 if the increase in dividends on the stock is included and that was not part of the original computation. The Treasury held at a early date (1922) in *I. T. 1242*, I-1, C.B., page 61, that the profit on this type of contract was taxable at the time of completion of performance:

> "*** The taxpayer will have received no taxable income during the life of A. and his wife, nor will he be entitled to any deduction until the principal has been repaid ***. Should A and his wife die before the taxpayer has paid them, the excess of the principal over the amounts already paid to them will represent income to the taxpayer in the year when the liability for future payments ceases ***".

This ruling is still the law and has been cited in recent rulings and court decisions.

1963 Federal Tax Service, Prentice Hall Par. 13,306 states the law as follows:

> " *(b) Agreement to pay an annuity in consideration of a lump sum:*
>
> When the amount paid equals the principal sum received, the installments thereafter paid are deductible *** as business expense if the payor is engaged in the business of writing annuities; otherwise they are a deductible loss if the transaction was entered into for profit, *I. T. 1242 C.B. 1922, Donald H. Sheridan, 18 T.C. 381.* ***"
>
> " *(c) Annuities paid in the acquisition of property-*
>
> Most, but not all of the cases hold that payments constitute capital expenditures. In some cases an expense, interest or loss deduction was disallowed. In others the court merely held there was no deduction."

In *Donald H. Sheridan v. Comm.*, cited, a nephew in consideration of the release of $30,000 of his liability under a mortgage given to his aunt in the acquisition of business real estate, agreed to pay her an annuity for life. She also made a gift to him at the same time of the balance of his liability on the mortgage and paid a gift tax thereon. The Tax court in sustaining the transaction said:

> "Donald stood to gain if his aunt died before the installments totalled $30,000 and the gain would have been taxable to him, I.T. 1242 ***".

Steinbach Kresge Co. v. Sturgess, 33 F. Supp. 897, also listed by *Prentice Hall*, is a strong authority against the contention that the Corn Products stock transaction was closed and that the profit or loss should be determined in 1958, and in favor of deferring the valuation of the stock until the last payment under the contract has been made. There, the controlling stockholder transferred his stock in a family corporation for an annuity of $73,000. The court holds the determination of the profit or loss should await the death of the annuitant. The language of the opinion is far reaching and I think worth quoting fully:

> "*** To be sure these stock for annuity transactions do not fit the pattern of a purchase, because purchase prices are almost always by definition fixed and non elastic. As a practical matter, however, it seems possible to wait until that elasticity has ceased by reason of the annuitant's death and to use the "price" so determined as the annuity writer's cost basis of capital gain or loss upon the eventual disposition of the stock. If the writer disposes of the stock before the annuitant dies, it would seem reasonable to defer the calculation of gain or loss until death occurs. The transaction in view of its uniqueness may be deemed to remain open even after disposition ***. Similar unique transactions have been deemed to remain open after disposition to await the fixing of the selling price. *Burnet v. Logan,* 283 U.S. 404
>
> disposition to await the fixing of the selling price, *Burnet v. Logan,* 283 U.S. 404 ***."

In the situation created by the present contract Corn Products makes no payments but causes its subsidiary to make them. In computing the profit or loss on the contract, it would seem clear that Corn Products would be entitled to deduct the amounts paid by Refined Syrups (Ohio), as a reduction of its investment in that company.

Assuming that a tax must be paid on the profit on these contracts, that profit will be reduced by all payments to me by Refined Syrups, less 52% thereof representing the tax benefit to that corporation resulting from deducting those payments in its tax returns year by year. The tax on such profit will therefore be reduced by such payments to the extent of 52% of such net amount actually paid by Corn Products through Refined Syrups. It follows that the actuarial costs would be similarly reduced, as shown by the enclosed schedules to figures well below the discounted value of the balance of payments under the present contract.

In view of the state of the law as shown above, there are also other arguments in favor of the change I am requesting. Unless the contract is amended in 1967 when it terminates, Corn Products will have to report these transactions fully in its tax return or risk penalties if they are later discovered. The joint survivorship contract will make indefinite the amount and time of realization of the profit on the contract. I might also add 37 years' tax practice has taught me that time cures many tax problems.

With apologies for the length of this and best regards,

Sincerely,

3900 Watson Place, N.W.
Washington, D. C. 20016

October 19, 1965

Dear Warren:

I am sorry to have to take up the subject of this letter again with you. I had come to think that further retirement compensation after April 1967 might not be necessary to me as I have had pending, now for almost two years, an application to the *U.S. Civil Service Commission* for an appointment as a Hearing Examiner which, if it had gone through, would have produced an adequate income.

Though it had to be amended and refiled three times and delayed to await a change in the requirements which had excluded nearly all applicants, it looked ultimately hopeful. However, it has now been definitely rejected per the letter which is enclosed and I have no other alternative than to ask again that I be given the benefit of the increase in the value of the Corn Products stock that *R.S. &S. stockholders* received in the merger and later returned to *Corn Products* for the purpose of funding a pension for me.

This increase, as of now, is sufficient to continue my present pension ten years longer on the basis which was used in the original computation. It was certainly not the intention of these *R.S.&S. stockholders* that this retransfer of *Corn Products* stock should result in any profit to *Corn Products* or go to decrease by more than the amount paid to me, the consideration received by *R.S.&S. stockholders* in the merger, for the assets of that company. As of now, however, it has had both these results. By retiring the *Corn Products stock* so retransferred *Corn Products* did not and could not have changed this result.

It was *Corn Products* who asked that *Corn Products stock* be surrendered, in lieu of a cash payment, to fund my pension. It was *Corn Products* who fixed the number of shares necessary, because *Corn Products* was in the best position to know the value of its own stock. For *Corn Products* not to pay me a pension based on the appreciaton, but to pocket it, would be contrary to the whole purpose of the transaction, namely to pay me a pension based on this stock contributed by the stockholders of *R.S.&S.*, and *in equity* would clearly represent *"unjust enrichment"* to the extent of the profit so realized in the transaction.

Finally, it seems to me these facts should be considered in this connection: In a sale of a business with assets worth many millions, and a large number of officers and employees, *Corn Products* took over under its own more liberal pension plan, all the officers and salaried employees *except me,* without any contribution by the *R.S.&S stockholders.* What reason can there be for refusing to give me even the benefit of the entire fund which the *R.S.&S. stockholders* contributed for the specific purpose of providing a pension for me. Both Sam and Donald Grant of *Fahnestock* know that no one in *R.S.&S.* did more toward putting the merger through than I. Several of the officers so benefitted worked day and night to block the merger and would have been successful except for my work. Why

should I be singled out alone for discriminatory and unfair treatment.

In case a conference with any of your organization would serve a useful purpose, I expect to be in New York toward the end of the first week in November but I could come up for a day almost any time.

Regards,

Sincerely

Warren S. Adams, Esq., General Counsel
Corn Products Company
717 Fifth Avenue
New York 22, N. Y.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Filed May 3, 1967]

ANSWER TO DEFENDANT'S REQUESTS FOR ADMISSIONS

First: Plaintiff admits the photocopies of the agreements attached to said requests numbered 1 and 2 are correct copies of the documents, referred to in paragraph 9 and 10 of the Complaint herein.

Second: Plaintiff denies the allegatons of Paragraph numbered 3.

Third: Plaintiff admits the allegations of paragraphs 4 and 5, of Defendant's said Requests for Admissions.

Fourth: Plaintiff admits that the statements of facts in the ruling referred to in paragraph 6 of Defendant's Request are true except insofar so far as those statements are in conflict with statements in the Complaint filed herein and the statements in *Plaintiff's State-*

ment in Opposition to Defendants' Motion and except that Exhibit "C" to Defendant's said requests does not contain a reference to the contract (Complaint Par. 9) of September 15, 1958, which is the source of the fund for which this suit was brought.

Fifth: Contrary to the statement of Defendant's paragraph 7 of said Requests for Admission, Plaintiff's employment as General Counsel for *Refined Syrups & Sugars Inc. (N.Y.)* ceased April 1, 1957 and in September 1957, his employment as General Counsel Secretary and Director of *Refined Syrups & Sugars Inc. (Ohio)* also terminated, but he continued to receive a reduced retainer up to April 1, 1958 from the Defendant.

Plaintiff, Pro Se

[Certificate of Service]

[Filed June 5, 1967]

REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND FOR SUMMARY JUDGMENT UNDER 12(b) AND RULE 56(b) AND (c) OF THE RULES OF CIVIL PROCEDURE WITH POINTS AND AUTHORITIES AND SUPPORTING AFFIDAVIT

1. *Plaintiff's arguments stated in his Complaint and Opposition to this Motion are based on a fundamental but erroneous assertion which is refuted by the very documents he has admitted to be correct herein.*

The September 3, 1958 Treasury Department Ruling and the September 15, 1958 Agreement (hereinafter referred to as the Indemnification Agreement) between Corn Products Refining Company and Refined Syrups & Sugars Liquidating Corporation show on their face that the Indemnification Agreement was not entered into for the purpose of funding a pension for Plaintiff as claimed.

Both of said documents show that the return to Corn Products Refining Company of 980 shares of its stock by Refined Syrups & Sugars Liquidating Corporation was made as an indemnification, or purchase price adjustment, to Corn Products Refining Company required under an Agreement dated January 21, 1957 (hereinafter referred to as the Purchase Agreement) between Corn Products Refining Company and Refined Syrups & Sugars, Inc. (New York), the predecessor of Refined Syrups & Sugars Liquidating Corporation.

The simple facts are that by the Purchase Agreement Corn Products Refining Company acquired all the assets of Refined Syrups & Sugars, Inc. (New York) in exchange for 128,288 shares of the common stock of Corn Products Refining Company. As part of the acquisition Corn Products Refining Company assumed certain specific liabilities and obligations of Refined Syrups & Sugars, Inc. (New York), and immediately following the acquisition Refined Syrups & Sugars, Inc. (New York) changed its name to Refined Syrups & Sugars Liquidating Corporation. At the same time substantially all the acquired assets and the assumed liabilities of Refined Syrups & Sugars, Inc. (New York) were passed by Corn Products Refining Company to Refined Syrups & Sugars, Inc. (Ohio), the defendant herein, which by reason of having been a subsidiary of Refined Syrups & Sugars, Inc. (New York) had now become a subsidiary of Corn Products Refining Company.

In paragraph 13 of the Purchase Agreement,[1] Refined Syrups & Sugars, Inc. (New York) has agreed to indemnify and hold harm-

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[1] Paragraph 13 provides:

> "R.S.&S. will indemnify and hold harmless Corn Products at all times after the date of this Agreement against and in respect of the following:

less Corn Products Refining Company from all liabilities and claims not expressly assumed by the latter in the Purchase Agreement. Plaintiff, claiming to be an employee of Refined Syrups & Sugars, Inc. (New York), demanded in April of 1958 retirement compensation as an employee of Refined Syrups & Sugars, Inc. (New York). This demand was not, however, one of the liabilities or obligations assumed by Corn Products Refining Company in the Purchase Agreement. Since the claim, if satisfied, would reduce the value of the acquired assets to Corn Products Refining Company, the latter was entitled under paragraph 13 of the Purchase Agreement to indemnification from the seller, Refined Syrups & Sugars, Inc. (New York),

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(a) All liabilities and obligations of, or claims against R.S.&S. not expressly assumed by Corn Products pursuant to paragraph 3.

(b) Any damage or deficiency resulting from any misrepresentation, breach of warranty or non-fulfillment of any agreement on the part of R. S. & S. and/or any of the subsidiary companies under this Agreement or from any misrepresentation in, or omission from, any certificate or other instrument furnished, or to be furnished, by R. S. & S. and/or the subsidiary companies hereunder.

(c) Any damage or deficiency resulting if, following the closing hereunder, any of the accounts receivable shown on the list of accounts receivable of R. S. & S. and of each of the subsidiary companies as of August 31, 1956, delivered to Corn Products under paragraph 5 (f) (3) above, or any such accounts receivable arising between August 31, 1956 and the closing, to the extent then remaining unpaid, are not paid in full on demand when due, less any reserve for such uncollectible accounts reflected on the books of R. S. & S. as at the date of the closing.

(d) All actions, suits, proceedings, demands, assessments, judgments, costs and expenses incident to any of the foregoing.

In addition, R. S. & S. shall reimburse Corn Products, on demand, for any payment made by Corn Products at any time after August 31, 1956 in respect of any liability or claim to which the foregoing indemnities relate."

at the time renamed Refined Syrups & Sugars Liquidating Corporation, to the extent of any cost at that time of satisfying Plaintiff's demand.

As a result of negotiations in which Plaintiff participated, Plaintiff's claim against Refined Syrups & Sugars, Inc. (New York) was settled by an Agreement dated October 1, 1958 (hereinafter referred to as the Consultant Agreement), between him and Refined Syrups & Sugars, Inc. (Ohio), then a Corn Products Refining Company subsidiary, that he would become a consultant to the latter for a nine-year period and would receive compensation therefor at the rate of $12,000.00 per year, or a total of $108,000.00. Just prior to the actual execution of the Consultant Agreement, Refined Syrups & Sugars Liquidating Corporation, as Refined Syrups & Sugars, Inc. (New York) had been renamed, and Corn Products Refining Company entered into the Indemnification Agreement under which Refined Syrups & Sugars Liquidating Corporation agreed to adjust the purchase price paid by Corn Products Refining Company for the assets of Refined Syrups & Sugars, Inc. (New York), the predecessor of Refined Syrups & Sugars Liquidating Corporation, by returning to Corn Products Refining Company 980 shares of the shares of the latter's stock which had been paid by the latter to Refined Syrups & Sugars, Inc. (New York) as the purchase consideration under the Purchase Agreement.

As shown by the admitted documents now before this Court, the Consultant Agreement between Refined Syrups & Sugars, Inc. (Ohio) and Plaintiff on the one hand, and the Purchase Agreement between Corn Products Refining Company and Refined Syrups & Sugars Liquidating Corporation on the other are two separate and independent arrangements. The former was a binding settlement as far as Plaintiff's claim against his former alleged employer, Refined Syrups & Sugars, Inc. (New York). The latter was plainly and simply an indemnification to Corn Products Refining Company in ac-

cordance with paragraph 13 of the Purchase Agreement required by the fact that Corn Products Refining Company had acquired less than it had bargained for in the Purchase Agreement.

2. *The complete refutation of Plaintiff's position is clearly seen if it be supposed that the 980 shares of Corn Products Refining Company stock had suffered a decline in value at the expiration of the Consultant Agreement.*

Surely, in such case Defendant would not have been able to claim from Plaintiff the amount of the decline in value of the shares – as Plaintiff now seeks in respect of the increase in value against the Defendant. Defendant respectfully submits, therefore, that Plaintiff's rights are governed exclusively under the Consultant Agreement, and that he has no pecuniary or other interest whatever in the Indemnification Agreement between Corn Products Refining Company and Refined Syrups & Sugars Liquidating Corporation.

As a matter of law, moreover, even if this Court were to agree with Plaintiff for purposes of this Motion, the Complaint should be dismissed for failure to name Corn Products Company, the successor to Corn Products Refining Company, a party defendant. By Plaintiff's own statement Corn Products Company, not Defendant, has, always had, and retains the 980 shares of Corn Products Refining Company stock returned to it under the Indemnification Agreement.

Defendant respectfully submits that the Complaint should be dismissed or that summary judgment be entered in its favor.

BERNSTEIN, KLEINFELD & ALPER

By Sheldon E. Bernstein
By Paul H. Mannes
Attorneys for Defendant

[Certificate of Service]

STATEMENT IN OPPOSITION TO DEFENDANTS' REPLY TO PLAINTIFF'S STATEMENT IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT.

Comes now the Plaintiff, J. Sterling Halstead pro se and respectfully shows the Court as follows:

I. Defendants' Reply, which is not verified, contains statements of fact contrary to the allegations of Plaintiff's Complaint which raise material issues of fact, from which he argues inter alia, that the contract of October 1, 1958, between *Refined Syrups & Sugars Inc.* (Ohio) and *Plaintiff* and the contract between *R. S. & S. Liquidating Corporation* and *Corn Products Refining Company*, dated September 15, 1958, were entirely separate and unconnected transactions and that the 980 shares of Corn Products stock retransferred under the latter contract was not, therefore, to constitute a funding of Plaintiff's pension. Plaintiff letter dated February 13, 1958, to Samuel A. McCain, GENERAL COUNSEL for both *Refined Syryps & Sugars Inc.* (Ohio) and *Corn Products Refining Company*, the original of which must be in the files of that Office, shows that these allegations in Defendants' Reply are affirmatively untrue. A copy of said letter is attached hereto.

II. The Defendant also argues that the possibility that the market value of the 980 shares of Corn Products stock might have gone down, supports their contention. The answer to this argument is that it can be shown at the surrender of this stock instead of funding the pension by a cash payment, was insisted upon by Corn Products, and that therefore they assumed that risk.

III. Defendants' Reply is still framed on the hypothesis that Plaintiff is suing for breach of a contract obligation and not in Equity on theory of unjust enrichment. Defendant seems not to deny the enrichment but only to contend that it was not unjust.

Plaintiff, Pro se

February 13, 1958

Samuel J. McCain, Esq.
General Counsel
Corn Products Refining Company
17 Battery Place
New York, New York

Dear Sam:

In accordance with your suggestion, I have made up, and enclose herewith, drafts of revised contracts covering the situation created by my claim against R. S. & S. Liquidating Corporation. Some provisions in these require explanation.

I have attempted to review thoroughly the decisions that might be relevant to this problem, with the following result:

The line of cases of which *Lucas v. Ox Fibre Brush Co.*, 281 U.S. 115, 8 AFTR 100901, P.H. 1958, par. 11 651, is the leading authority, indicate that a contract of this kind, based in part on past services and in part on services to be rendered, where no prior contract existed, is effective for tax purposes and the payments under it deductible in the year when paid. See also, in this connection, *General Smelting Co.*, 4 T.C. 313; *Oppenheim, Inc. v. Cavanaugh*, 90 F.Supp. 107, 39 AFTR 468.

These cases suggest to me that such a contract, made by the Ohio corporation, based on past services rendered to it, as well as future services, would be certain to receive approval from the Bureau, whereas if the claim was treated as solely against R. S. & S. and based solely on current services to the Ohio corporation, the Bureau might argue that the real consideration was services rendered to R. S. & S.

The following cases, holding that payments by stockholders to officers and employees of a corporation, under retirement contracts, etc., are not deductible, confirm this view and seem to me to threaten difficulty:

George Washington, 80 F.2d 829, 17 AFTR 127;
Flood v. U.S., 133 F.2d 173 (C.C.A.1st, Jan. 29, 1943);
Security – First National Bank of L. A., 28 B.T.A. 289;
Corsa Land Co., 29 B.T.A. 389.

Another case that has troubled me is *Boulevard Frooks, Inc.*, P. H. Memorandum Tax Court Decision, par. 43007. In that case the element of past services was not apparently present and the Court held that even though the contract provided for future services, if no services were rendered, no deduction was allowable. This result may be explainable by the fact that no payment for services had been made although the liability may have been set up on the accrual basis and claimed as a deduction. This case, to me, however, emphasizes the advantage of being able to rely on past services as well as current and future services, as consideration for the payments.

I am not sure that I have caught your idea in the draft of the contract for R. S. & S. and Corn Products. In this I have merely set up the facts which seem to me relevant and necessary, and the action to be taken.

The contract for the Ohio corporation, however, has been changed somewhat.

You suggested in one of our phone discussions that the twelve-year certain payments in my original draft was not a desirable provision and that possibly payments for life would be better. The thought has occurred to me that you based this on the fact that reliance could not be placed on past services rendered to R. S. & S., or perhaps on the *Frook* case, *supra*. If this is in fact your basis, it will be taken care of by using services to the Ohio corporation. Moreover, Ed Freeman has shown not a little pique at the fact that superficially the payments I am asking are equal to his and I have no desire to antagonize him. I have accordingly changed the

figure to thirteen years which, taking into consideration my age and Ed's, makes his contract and mine cover the same periods.

The result on this basis, however, is not nearly as satisfactory from my viewpoint as Ed's and Waddy's provisions, because of the fact that they have life estates in one half their annual payments plus ten years certain. Also, since the contract does not have the gamble inherent in an agreement providing income for life, Corn Products might get a windfall and on this theory R. S. & S. might insist that the payments should be substantially reduced. I have substituted a provision which I have inserted as Paragraph 4, just for the purpose of raising the point, which is thoroughly supported by the cases. A contract to pay an amount for life to the widow of an officer of a corporation, if she survives him, included in a general employment contract such as this, has been sustained in *Seavy & Flarshime Brokerage Co.*, 41 B.T.A. 198, and *McLaughlin Gormley King Co.*, 11 T.C. 569, both based on *Lucas v. Ox Fibre Brush Co.* and *Flood v. U.S.*, cited above. I have cut the payment in half so that it roughly corresponds with the payments for life which Waddy and Ed Freeman will receive. The whole result, it seems to me, is not very different from their contracts and that will be important in obtaining a favorable ruling as to all of them from the Bureau of Internal Revenue.

As to presenting the matter to the Bureau, it would be my approach to raise the question in the name of R. S. & S. Liquidating Corporation, so that it will be picked up as a supplementary question under the original ruling dated February 18, 1967. It would seem to me the facts could be recited somewhat as they are set out in the preamble to the R. S. & S. Refined Syrups amending contract, and some information as to the history of the Ohio corporation and the past services rendered to it, together with a statement as to the value and nature of the current services provided for, and then ask for a ruling on both points. I might add that the files show in 1956

22% of the total sales by volume and approximately 21% of the accounts receivable belong to the Ohio corporation. Practically all tank installations were made by it, which involved a lot of legal work, as did its State and local tax returns, etc.

It does not seem to me that they could possibly refuse to treat the payments to me as allowable deductions. The theory of the tax decisions seems to be that the fact as to services rendered and not the existence of obligations or consideration determines deductibility. The language of the Code, IRC sec. 162(q)(1) sustains that view.

The argument, which the Bureau might urge, that the payment by R. S. & S. constitutes the reason for the assumption of the obligation to make payments to me under the settlement, is contrary to that theory and the decisions cited. It would be hard to prove that in making the contract with me the Ohio corporation assumed any liability or was doing anything different from the taxpayers in the cases cited. My past services to it plus future services agreed to should be sufficient under these cases to sustain the payments as deductible. R. S. & S. is making a repayment because the contract with me was not made before the sale. On this theory, it seems unnecessary to say much about the claim or the retirement plan, in arguing for the deductions. In any event, if they did attempt to allocate the past services, they could only disallow a fraction of the payments as deductions because of the agreement to render future services. Such a result might not be too serious.

It might facilitate matters if you would want to indicate the number of shares of stock you thought ought to be surrendered. Ed seems to be a bit slow about getting around to this.

With thanks for your patience and cooperation in trying to straighten out this situation,

Sincerely,

JSH:ML

/s/ J. Sterling Halstead

[Filed June 13, 1967]

ORDER

Upon consideration of the defendant's Motion to Dismiss or in the Alternative for Summary Judgment filed pursuant to Rule 12(b) and Rule 56(b) and (c) of the Federal Rules of Civil Procedure and of the exhibits thereto and the opposition filed on behalf of plaintiff and the Court having heard oral argument herein on June 7, 1967, the Court finds that there is no genuine issue as to any material fact and the defendant is entitled to summary judgment as a matter of law. Therefore, it is by the Court this 13th day of June 1967.

ORDERED, that the defendant's Motion for Summary Judgment be, and the same hereby is granted, and that the plaintiff have and recover nothing by his suit.

/s/ Joseph J. McGarraghy
Judge

[Certificate of Service, dated June 7, 1967]

[Filed June 28, 1967]

NOTICE OF APPEAL

Notice is hereby given this 28th day of June, 1967, that the Plaintiff, J. Sterling Halstead, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 13th day of June, 1967. in favor of Defendant, Refined Syrups & Suguars, Inc. against said Plaintiff.

/s/ J. Sterling Halstead
Pro se

BRIEF FOR APPELLEE

In the

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 21,160

J. STERLING HALSTEAD,
Appellant,

v.

REFINED SYRUPS & SUGARS, INC.,
Appellee.

APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SHELDON E. BERNSTEIN
PAUL H. MANNES
818 18th Street, N.W.
Washington, D.C. 20006
Attorneys for Appellee

Washington, D.C. [illegible]

STATEMENT OF QUESTION PRESENTED

In 1957, the assets of Refined Syrups and Sugars, Inc., (RSS), including all of the stock of appellee, an Ohio corporation, were purchased by Corn Products Refining Company (Corn Products) in exchange for 128,288 shares of the common stock of the latter. Appellant, one time counsel of RSS and appellee, then asserted a claim for a pension against appellee and RSS. In settlement of this claim, appellee then contracted to pay to appellant the sum of $1,000.00 a month for nine years, a total of $108,000.00. In respect of this claim, which was an undisclosed obligation of RSS as far as Corn Products was concerned, Corn Products demanded and received back 980 shares of its stock pursuant to the indemnity provisions of the purchase contract. The nine years having elapsed and appellant having received the full $108,000.00, appellant now claims appellee has been unjustly enriched because the stock used to indemnify Corn Products has doubled in value in the intervening years. In these circumstances, in the opinion of appellee the questions presented are:

(1) Whether appellant has an actionable claim, or whether not challenging the fairness of the contract when made, he can now seek judicial alteration of the contract after appellee has performed its bargain fully;

(2) Whether, in any event, appellant's claim was barred by an accord and satisfaction, laches or the Statute of Limitations; and

(3) Whether summary judgment was proper in view of these undisputed facts.

INDEX

CITATIONS

CASES:

In the

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 21,160

J. STERLING HALSTEAD,
Appellant,

v.

REFINED SYRUPS & SUGARS, INC.,
Appellee.

APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

For purposes of this appeal only, appellee-defendant[1] will accept the Statement of Facts as set out by appellant-plaintiff[1] (Br., pp. 2-4) with two qualifications:

First, the retransfer to Corn Products Refining Company of 980 shares of its capital stock was not, as stated by plaintiff (Br.,

[1] For convenience the parties will hereafter be referred to as below.

p. 3), "to provide a fund for the payment of retirement compensation to the plaintiff." Rather, as expressly stated in the controlling contract of September 15, 1958 (JA 14-15), that retransfer resulted from the facts: (1) that plaintiff had made a claim because of his exclusion from the retirement provisions made for officers and employees of the affected corporations; (2) that defendant had "negotiated a settlement with said claimant . . . providing for the continued employment of the claimant," and (3) that Corn Products therefore contended "that, as a result of said settlement it [was] entitled to indemnification pursuant to paragraph 13 of said contract of January 21, 1957" [the original sales contract, paragraph 13 of which was a typical indemnity provision for undisclosed liabilities and obligations. See JA 40-41].

Second, plaintiff participated in the negotiation and preparation of this modification agreement of September 15, 1958 to which he was not a party but which he attested (JA 16).

Plaintiff received the last payment of the $108,000.00 payable to him on March 1, 1967. This action was filed March 3, 1967.

SUMMARY OF ARGUMENT

I. Plaintiff's claim of unjust enrichment is a garbled effort to evoke an equitable doctrine which in fact, in law and in common sense is utterly inapplicable here. No "benefit" was conferred by or for plaintiff. Defendant received no "benefit." Its parent did receive back part of the purchase price because of its contractual entitlement to reimbursement for undisclosed liabilities. Obfuscation of language and textbook theory cannot disguise the blatant effort to seek judicial rewriting of an unchallenged contract fairly made and fully performed by defendant – and this nine years after the contract was made and plaintiff's receipt of the full consideration bargained for.

II. Plaintiff's claim is barred by either the Statute of Limitations or laches, and the District Court properly entered summary judgment even if it were to be assumed plaintiff's grievances amounted to a cognizable claim.

III. Plaintiff's complaint discloses upon its face that there has been an accord and satisfaction barring his claim. Plaintiff presented a claim for retirement benefits to his employer's successor which was compromised by the payment to him of $108,000.00. The fact that this claim caused the purchaser of his employer's assets to seek indemnity from its vendor has no relevance. And for this reason also, summary judgment was properly entered for the defendant.

ARGUMENT

I

The Facts and Circumstances Set Out in the Complaint and Other Pleadings Do Not State a Claim Against This Defendant.

Plaintiff repeatedly requests equitable relief for alleged unjust enrichment retained by defendant. "The doctrine of unjust enrichment is equitable in its nature, and generally it is applied to permit a recovery where one person has received a benefit from another and the retention thereof would be unjust under some legal principle recognized in equity." *Rhode Island Hospital Trust Co. v. The Rhode Island Covering Co., Inc.*, 190 A.2d 219, 220-221 (R.I. 1963). Plaintiff's claim must presuppose that defendant received a benefit from plaintiff which would be inequitable for it to retain. *Herrmann v. Gleason*, 126 F.2d 936, 940 (6th Cir. 1942). Here because of plaintiff's claim defendant received no benefit from plaintiff but did incur a substantial liablity for which its parent Corn Products did not bargain and was entitled to indemnity therefrom. The in-

demnification need not have been in the form of Corn Products shares, (980 in number and $46.00 per share in value at the time of indemnification) so if time disclosed that the parties to the indemnification of Corn Products guessed wrong with respect to the vagaries of the stock market, that was their problem and theirs alone. On the other hand, if the price of Corn Products stock had remained at 46, the value of the 980 shares would have remained $45,080.00 and neither Corn Products nor defendant, its subsidiary, could have sought relief against the vendor or the plaintiff. Had the value of Corn Products stock declined in value, would plaintiff have countenanced a reduction in the amount of payments to him? The muddiness of plaintiff's reasoning is also manifest by the fact that he sued defendant and not Corn Products, the recipient of the 980 shares.

The authorities relied upon by plaintiff offer no support to his position that he has stated a cause of action.[2] His cause of action does not involve a third party beneficiary contract. Clearly there was no intention to create a right in plaintiff by the contract of September 15, 1957, whereby Corn Products received back 980 shares

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[2]Defendant concedes that Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment may be granted only in the absence of a genuine issue as to a material fact as contended in appellant's brief p. 6 where he cites as authority *Merchants Indemnity Corporation v. Peterson*, 113 F.2d 4 (3rd Cir. 1940); *Toebelman v. Missouri Kansas Pipe Line Co.*, 130 F.2d 1016 (3rd Cir. 1942); *Sarnoff v. Ciaglia*, 165 F.2d 167 (3rd Cir. 1947); *Ramsouer v. Midland Valley R. Co.*, 44 F.Supp. 523 (W.D. Ark. 1942); *Zig Zag Spring Co. v. Comfort Spring Corporation*, 89 F.Supp. 410 (D.N.Y. 1950). However the cases which appellant indicates he is chiefly relying upon (Brief-iii) do not appear to deal with this point or any other involved in this action. *Myers v. Firemen's Insurance Co. of Washington, D.C.*, 107 U.S.App. D.C. 22, 274 F.2d 84 (1959) concerns a claim against a fire insurance carrier when the tortfeasor has been released. *Harris v. Tobriner*, 113 U.S. App. D.C. 10, 304 F.2d 377 (1962) concerned the granting of summary judgment in an action seeking a review of a determination of the Board of Appeals and Review when the administrative record was not before the District Court.

of its stock as an indemnity but to the contrary this contract was solely for the benefit of Corn Products in order to enable it to recoup the funds it would have to pay plaintiff. Even torturing the two contracts into a third party beneficiary situation, plaintiff still has no standing as defendant did everything it was obligated to do.

Auerbach v. Grand Nat. Pictures, Limited, 29 N.Y.S.2d 747 (Sup. Ct. 1941) cited by plaintiff merely repeats that *Lawrence v. Fox* is still the law of New York and unless established to the contrary New York courts will presume that it is the law of all common law jurisdictions. In *Beatty v. Guggenheim Exploration Co.*, 225 N.Y. 380, 122 N.E. 378 (1919), Judge Cardozo speaking for the Court of Appeals stated that an agent's employer could waive orally a contract condition that the agent could not be interested in a similar business even though the employment contract provided that the contract could not be altered except by writing subscribed by the parties.[3] What comfort this case and *Grand Trunk Western R. Co. v. Chicago & Western Indiana R. Co.*, 131 F.2d 215 (7th Cir. 1942) offer plaintiff is obscure. Just as obscure are the alleged genuine issues of material fact advanced by plaintiff.[4]

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[3] "Those who make a contract may unmake it. The clause which forbids a change may be changed like any other." 122 N.E. at 381.

[4] For the reasons apparent in the text, the three points advanced by plaintiff (Br., p. 5) are not *genuine* issues of *material* fact precluding the grant under Rule 56.

1. Plaintiff seeks such an issue by misstating defendant as asserting that the contracts of indemnification and hiring were "unrelated" (Br., p. 5 citing JA 42). Of course the contracts were related and the reference cited is merely that they were "independent" – which they were. Moreover, as shown in the text the distinction would in no event warrant a difference in result.

2. Next, the confused and garbled statements and quotation cannot disguise the manufacture of an alleged genuine and material issue. That the two contracts in question were negotiated together is nowhere disputed except in

Plaintiff's charge that defendant has been "unjustly enriched" does nothing but question the adequacy of consideration. However, throughout his brief plaintiff ignores the basic proposition that in the extraordinary case when fairness and adequacy of consideration are in issue these must be viewed at the time of the making of the contract. Put another way, "as to the time of the inadequacy, in order that it may ever be fatal, it must exist at the concluding of the contract. If there was no inadequacy at the making of the contract, none can arise from subsequent events or change of circumstances." *Pomeroy's Equity Jurisprudence*, 5th Ed. § 927, p. 638 (1941). See *In re Stevens' Estate*, 163 C.A.2d 255, 329 P.2d 337, 342, (2d Dist. App. Cal. 1958); *Pearson v. George*, 209 Ga. 938, 77 S.E.2d 1, 6 (1953); *Dingler v. Ritzius*, 42 Idaho 614, 247 P. 10, 11 (1926).

Plaintiff has not pointed out and cannot point out any legal or equitable principles supporting his theory of this case. The undisputed facts are that the parties to the settlement of plaintiff's claim and the parties to the indemnification agreement got exactly what they bargained for.

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plaintiff's own pretensions. But as shown in the text no fund was ever intended or created; part of a purchase price was merely returned as required by contract on account of an undisclosed liability.

3. The third, and final, alleged issue is conjured from plaintiff's failure to quote the next succeeding paragraph of the preamble of the September 15, 1958 contract from which plaintiff quotes. That paragraph expressly states that Corn Products "contends that, as a result of said settlement, it is entitled to indemnification pursuant to paragraph 13 of said contract dated January 21, 1957 [The purchase contract]" whereupon the contract then proceeds to provide for such indemnification and no more.

In short there are no open issues of fact except as created by garbled misstatements or omissions. And while there are differences between the parties, those differences are not as to the facts but as to their legal effect. Indeed, neither of the agreements in this record expressed or implied any requirement to retain the 980 shares as a "fund." For aught shown in the record the shares were sold immediately.

II

Plaintiff's Claim Is Barred by the Statute of Limitations or Laches and Summary Judgment Was Proper in Either Event.

If plaintiff is seeking a money judgment for the difference between the $108,000.00 received[5] and the present value of the 980 shares as adjusted for dividends and stock splits, his claim is clearly barred by the Statute of Limitations, D.C. Code 12-301. If there was any "unjust enrichment," this had to take place when the two contracts he questions were entered into in 1958 and the rights of the parties were ascertained. Plaintiff does not allege any breach of contract.

The disposition of Limitations questions by summary judgment has been approved by this Court and several others and was proper in this case. *Creditors Committee of the Horton Brown Corporation v. Goodhart*, 98 U.S. App. D.C. 144, 233 F.2d 23 (1956); *Rinzler v. Westinghouse Electric Corp.*, 333 F.2d 719, 720 (5th Cir. 1964); *Albrecht v. Indiana Harbor Belt R. Co.*, 178 F.2d 577 (7th Cir. 1949); *Kithcart v. Metropolitan Life Ins. Co.*, 150 F.2d 997, 1000 (8th Cir. 1945); *Dam v. General Electric Co.*, 265 F.2d 612 (9th Cir. 1958); *Rohner v. Union Pacific Railroad Co.*, 225 F.2d 272, 274 (10th Cir. 1955).

Considering plaintiff's claim to be of an equitable nature, it is barred by laches. Since the execution of the agreement settling plaintiff's claim for a pension, plaintiff has collected the entire $108,000.00 which defendant was obligated to pay to him, and it was only after the last payment was made that the action was filed in District Court. In the nine years plaintiff was paid, defendant's

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[5]The complaint indicates that the value of the stock in March, 1967, was $96,530.00.

position was changed materially. The parties cannot be returned to the *status quo*. This would appear an apt case for the application of the doctrine of laches, for as this Court stated:

> "No rule is better established than that courts of equity will not enforce stale demands or, as was said by Lord Camden: 'Nothing can call forth this court into activity but conscience, good faith, and reasonable diligence,' or by Mr. Justice Brewer: 'No doctrine is so wholesome, when wisely administered, as that of laches. * * * It is a doctrine received with favor, because its proper application works out justice and equity, and often bars the holder of a mere technical right, which he has abandoned for years, from enforcing it when its enforcement will work large injury to many.'" *Hastings v. Coe*, 69 App. D.C. 94, 96 – 99 F.2d 129, 131 (1938).

Summary judgment is likewise proper when it appears as a matter of law plaintiff has been guilty of laches. *Dixon v. American Telephone & Telegraph Co.*, 159 F.2d 863 (2d Cir. 1947); *Dam v. General Electric Co.*, 265 F.2d 612, 614 (9th Cir. 1958); *Hunt v. Pick*, 240 F.2d 782, 787 (10th Cir. 1957); *Carroll v. Pittsburgh Steel Co.*, 100 F.Supp. 749 (W.D. Pa. 1951). Judge Frank's opinion in the *Dixon* case seems especially appropriate:

> "The facts bearing on the issue of laches are wholly within plaintiff's knowledge; nothing that could be learned at a trial could add to the data bearing on that issue; with respect thereto, he is in nowise dependent 'on what he can draw out of' the defendants. Had there been a trial, none of the defendants, by their testimony, would have contributed anything concerning the reasons for the delay; if, at a trial, his testimony had been in accord with his affidavits and had been believed, nevertheless dismissal for laches would have been necessary. As a trial would have involved no question of credibility, our precedents are not in point. Since,

> as to laches, there was no issue of fact but only one of 'law,' the vice of 'trial by affidavits' is here absent, and the summary judgment must be affirmed." 159 F.2d at 864.

Regardless of whether plaintiff's claim was barred by the doctrine of laches or the Statute of Limitations, summary judgment was properly entered.

III

On Its Face Plaintiff's Complaint Disclosed There Had Been an Accord and Satisfaction Barring His Claim.

In paragraphs 8 and 9 of his complaint plaintiff notes that after receiving a request for his resignation, he presented a claim for the payment of appropriate retirement compensation. After extended negotiations among all the parties two contracts were entered into, one providing an indemnity to the purchaser of the assets of his former employer and the other providing for the payment to plaintiff of $108,000.00. The indemnification agreement of September 15, 1958, upon which plaintiff's signature appears, contains the following unequivocal recitals:

> "WHEREAS, the entire outstanding stock of Refined Syrups & Sugars, Inc., an Ohio corporation, which had been owned by R. S. & S. since the organization of said Ohio corporation in 1946, was included among the assets transferred to C. P. on March 15, 1957, pursuant to the terms of said contract dated January 21, 1957, and thereafter said Ohio corporation took over and is now operating the business of R. S. & S. as well as its own as a subsidiary of C.P.; and
>
> "WHEREAS, a claim has been made by an officer of both corporations based on his exclusion from the retirement provisions made for all officers and employees of both corporations; and

"WHEREAS, said Ohio corporation has negotiated a settlement with said claimant which embodies a settlement of said claim satisfactory to the parties concerned, providing for the continued employment of the claimant; and

"WHEREAS, C.P. contends that, as a result of said settlement it is entitled to indemnification pursuant to paragraph 13 of said contract dated January 21, 1957."

The letter from the Internal Revenue Service containing a ruling concerning the proposed agreements for settlement of Mr. Halstead's claim and for indemnity of Corn Products also notes:

"All of the officers and salaried employees of RSS were taken over by ORSS, but soon thereafter, in September 1957, it requested Mr. J. S. Halstead, who had served both companies over many years, to discontinue his services as Secretary and General Counsel. The officers and salaried employees of both companies, except Mr. Halstead, were covered under a Retirement Plan which ORSS continued in effect. Upon being advised of the discontinuance, Mr. Halstead, upon severing his services with ORSS on March 31, 1958, presented a claim to that company for retirement and severance benefits similar to those which applied to the said officers and employees under its Retirement Plan. Negotiations thereunder have resulted in a proposed settlement between Mr. Halstead and ORSS, as reflected in a copy of Agreement submitted with the application for a ruling (Exhibit A), the contents of which have been agreed upon fully, but the formal signing has been deferred pending, the outcome of the ruling requested. The principal provision covered therein is that ORSS will have undertaken to engage the services of Mr. Halstead on a retainer basis at the rate of $12,000 per annum, payable monthly, beginning at April 1, 1958 for a period of nine years.

> "Upon the filing of the claim by Mr. Halstead with ORSS, demand was made by CP or RSS for an adjustment of the capital stock shares paid under the warranty provisions of the original merger agreement by which a portion thereof would be transferred back from RSS. Negotiations thereon have resulted in a tentative agreement being reached which calls for this adjustment, which agreement is expected to be formalized. . . ."

It appears beyond doubt that there has been an accord and satisfaction. Plaintiff's claim was extinguished in 1958. As Justice Van Orsdel opined:

> "'The rule is equally well established that, where a claim is unliquidated, or honestly in dispute, the payment and acceptance of a less sum than claimed operates as an accord and satisfaction, the compromise being a good consideration for the concession made." *Ansberry v. Harrash*, 65 App. D.C. 80, 81, 80 F.2d 381, 382 (1935).

Where the essential facts are made clear of record, accord and satisfaction may be adjudicated on summary judgment. *Colonial Airlines v. Janas*, 202 F.2d 914, 918 (2d Cir. 1953). Thus, this ground as well serves as another independent basis for upholding the judgment of the Court below.

CONCLUSION

The record below conclusively established that plaintiff's complaint was barred for three distinct reasons, any one of which was sufficient to compel the entry of summary judgment for the defendant. Accordingly, it is respectfully submitted that the judgment for the defendant Refined Syrups & Sugars, Inc., should be affirmed.

Respectfully submitted,

SHELDON E. BERNSTEIN
PAUL H. MANNES
818 18th Street, N.W.
Washington, D.C.
Attorneys for Appellee

Of Counsel:
BERNSTEIN, ALPER & MANNES
818 18th Street, N.W.
Washington, D.C. 20006

REPLY BRIEF OF APPELLANT

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,160

J. STERLING HALSTEAD, *Appellant,*

v.

REFINED SYRUPS & SUGARS, INC., *Appellee.*

Appeal from an Order of the United States District Court for the District of Columbia

J. STERLING HALSTEAD
3900 Watson Place, N.W.
Washington, D. C.
Attorney for Appellant, Pro Se.

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

TABLE OF CITATIONS

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REPLY BRIEF OF APPELLANT

The inaccurate and misleading statements and unsound arguments in Appellant's Reply Brief make it necessary to state again Appellant's contentions:

Appellant sues in Equity to recover a 100% increase in the value of 980 shares of Corn Products stock retransferred by Appellant's employer of 20 years, to fund a pension for Appellant, **a pure bonanza and unjust enrichment to Appellee and Corn Products Company.**

In Equity this unexpected profit should be applied to the purpose for which the stock was retransferred, namely, to fund the pension for Appellant.

Appellant also contends that he is the beneficiary of a Contract for the benefit of a Third Party, specifically the contract between *R.S.&S. Liquidating Corporation* and *Corn Products Refining Company,* dated September 15, 1958, and as such under the laws of the State of New York of which Appellant was a resident and where the contract was made, he is entitled to this increase in the value of the property transferred for his benefit.

It should also be pointed out that of the papers in this record, on which the inaccurate and misleading statements referred to are based, not a single document is verified or even signed by an officer of *Corn Products* or *Refined Syrups & Sugars, Inc., Ohio,* but instead all are signed by Washington counsel of these corporations.

In general, the defenses set up in the Appellee's brief are based on the erroneous theory that Plaintiff is suing at law to enforce some legal obligation. It passes over the fact, which is clearly shown in this record, that the obligation for which it is transferred, was to provide a pension fund for Appellant because he had not been included in the general pension plan for all the employees and officers of that corporation.

The Appellee, moreover, denies also on pages 1 and 2 of his brief that the transfer was for the purpose of providing a fund for payment of a pension to Appellant. He apparently bases that on the unsworn statement of counsel entitled, "REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS," (JA 39) where he states:

> "The September 15, 1958 Agreement (hereinafter referred to as the Indemnification Agreement) between Corn Products Refining Company and Refined Syrups

> & Sugars Liquidating Corporation show on their face that the Indemnification Agreement was not entered into for the purpose of funding a pension for Plaintiff as claimed."

As to this, the Court is respectfully referred to the following passage, "STATEMENT IN OPPOSITION TO DEFENDANTS' REPLY":

> I. Defendants' Reply, which is not verified, contains statements of fact contrary to the allegations of Plaintiffs' Complaint which raise material issues of fact, from which he argues inter alia, that the contract of October 1, 1958, between Refined Syrups & Sugars Inc. (Ohio) and Plaintiff and the contract between R. S. & S. Liquidating Corporation and Corn Products Refining Company, dated September 15, 1958, were entirely separate and unconnected transactions and that the 980 shares of Corn Products stock retransferred under the latter contract was not, therefore, to constitute a funding of Plaintiff's pension. Plaintiff letter dated February 13, 1958, to Samuel A. McCain, GENERAL COUNSEL for both Refined Syrups & Sugars Inc. (Ohio) and Corn Products Refining Company, the original of which must be in the files of that Office, shows that these allegations in Defendants' Reply are affirmatively untrue. A copy of said letter is attached hereto (JA 45).

On page 4 of Appellee's typewritten brief (page 3 of this), Appellee states:

> Plaintiff's claim must presuppose that the defendant received a benefit from Plaintiff which would be inequitable for Corn Products to retain . . ."

That is, of course, what Appellant is suing for.

The following statement also on page 4 of Appellee's brief is affirmatively untrue:

> "Here, because of Plaintiff's claim, defendant received no benefit from that, but did incur a substantial liability for which its parent corporation, Corn Products, did not bargain . . ."

The fact is that Appellee received the right to deduct pension payments to Appellant in computing its income taxes, plus Appellant's services, and C.P., its Stock-Letter to Samuel A. McCain (JA 45) worth $50,000.00.

On the same page, Appellee seeks to confuse the issue by implying that the retransfer of 980 shares of stock to Corn Products by Appellant's former employer was at Appellant's voluntary election, in the following statement:

> "The Indemnification need not to have been in the form of Corn Products shares, . . ."

The following incorrect text of the Treasury ruling dated September 3, 1958 is the only possible basis in the record of this case for this statement. The correct text of this Treasury ruling, dated September 3, 1958, designated by the Appellee for printing in the Joint Appendix, as served on the Appellant, as Exhibit C, to defendant's "REQUEST FOR ADMISSIONS," of ~~RS&S Liquidating Corporation, now dissolved,~~ is as follows:

> "Upon the filing of the claim by Mr. Halstead with ORSS, demand was made by CP of RS&S for an adjustment of the capital stock shares paid."

See copy attached to this brief as JA 50.

As printed in the Joint Appendix, however, on designation by Appellee, page JA 20, and quoted at page 10 of Appellee's brief it reads as follows:

> "Upon the filing of the claim by Mr. Halstead with ORSS, demand was made by CP or RS&S for an adjustment of the capital stock shares paid."

This latter incorrect text must be the basis for the contention in Appellee's brief that the retransfer of this stock was not imposed as a condition of the pension agreements by Corn Products. This error in printing Appellee's part of the Joint Appendix seems inexcusable.

Appellee winds up this part of its brief with this statement, ". . . for aught shown in the record the shares

[of C.P. Stock] were sold immediately." It is not clear whether Appellee is suggesting that a situation existed here comparable to that in the case of an express trust where a trustee has made off with the assets. There may be a parallel between the two cases from a moral standpoint but Appellant is not claiming that an express trust was created, only that a constructive trust should be, on the basis of the facts and authorities shown in this record.

In Appellee's brief, on the erroneous theory that Appellant is seeking a money judgment, Appellee states that the *Statute of Limitations or Laches* is a defense, as a matter of law, to Appellant's suit, **but Appellee only argues and cites authorities for the proposition, that such a question may be properly decided on a motion for summary judgment, a matter of procedure.**

Appellee makes no attempt to meet the argument or distinguish the cases set forth in appellant's STATEMENT IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (JA 24). These arguments and authorities are repeated in this brief for the convenience of the court and follow:

The Law has been clear in the District of Columbia, since early times, that the Statute of Limitations does not apply to suits in Chancery:

Peters v. *Sutter*, 2 MacArthur (D.C. Rep.) (September 1876). The Supreme Court of the District there stated:

> "The question here presented has been often discussed and decided by the Courts of Maryland. We have uniformly held that the Statute does not apply to suits in Chancery, the recovery of money secured by a mortgage, or equitable line, . . ." citing cases.

In *Halliday* v. *Halliday*, 56 Appeals D.C. 179, 1926, the Court said (page 183):

> "Finally it is urged that relief in this case is barred by laches of the appellee, 12 years having elapsed between the execution of the deed in question and the filing of the Bill. In some jurisdictions it has been

> held that Equity will follow the Statute of Limitations but this has never been the rule in this jurisdiction. Whether the laches may be set up will depend on the particular circumstances in each case."

The next contention of the defendant is that Plaintiff has been guilty of laches. This is based on an unsound premise and several erroneous statements of fact:

First: It argues that the breach of the contract on which he erroneously assumes Plaintiff is suing, occurred 9 years ago or at some time which he does not fix. The fact is that the extent of the unjust enrichment resulting from these contracts could not be determined until after March 1, 1967 when the payment of the annuity to Plaintiff was terminated by the defendant. (See letter attached to the accompanying affidavit), and the amount of the fund remaining determined. The defendants' argument that Plaintiff has been guilty of laches cannot be sustained because Plaintiff did not bring suit prior to that date.

Second: Defendant next charges on page 2 of his brief:

> "Plaintiff has done nothing to change the situation and defendant has changed its position by transferring a substantial sum of money to him."

This statement ignores the fact that the distributions to which defendant refers actually came from Plaintiff's former employer, Refined Syrups & Sugars Inc. (N.Y.) and that not a dollar of those distributions were contributed by the defendant of Corn Products Company. Defendant's claim that it has suffered financially as a result of Plaintiff's failure to bring a suit at an earlier date, is not true unless defendant is complaining that its profit would have been greater if Plaintiff had acted earlier. The provision at the end of the agreement of Oct. 1, 1958, giving the Board of Directors of Corn Products practically unlimited power to discontinue Plaintiff's pension, which was inserted at the last minute over Plaintiff's strenuous objection, may

reveal why defendant argues that it has been prejudiced by the delay.

It should be pointed out parenthetically that in view of this unlimited power given to the Directors of Corn Products in the last paragraph of that agreement of October 1, 1958, to stop the pension, the contract so-called was actually nothing more than a unilateral option on Plaintiff's services for nine years, not actually binding the defendant at all.

Third: This further inaccurate statement appears on page (2) of defendant's brief:

> "without challenging or questioning, the fairness of the foregoing arrangement when made and apparently having participated in the arrangements themselves, Plaintiff now alleges that the value of Corn Products stock etc."

The fact is that in May 1963, when it first became apparent to Plaintiff that the rise in the market price of Corn Products stock indicated that defendant and Corn Products might realize a large profit when the payments of the annuity provided for, were completed, he presented his claim to General Counsel of Corn Products who is also the General Counsel for the defendant, and has continued to press his claim ever since. Copies of this correspondence attached to Appellant's affidavit (JA 28 et seq.).

In the light of all the foregoing, the argument that Plaintiff is barred from recovery in this action because the agreement of October 1, 1958 constituted "an accord and satisfaction" does not deserve a further answer. As heretofore stated and emphasized, Plaintiff's case does not rest on challenging the binding character of that agreement but *is a suit to impress a constructive trust* on the unexpected increase in the fund provided by Plaintiff's former employer, Refined Syrups & Sugars Inc of New York for Plaintiff's pension, to which neither the defendant nor its parent corporation, *The Corn Products Company, in Equity,* have any just claim. (end of quote from JA)

One further misleading statement should be pointed out, consistent with Appellee's other statements calculated to convey the impression that the transfer of stock was not deliberately intended and planned solely to provide a fund to pay the pension, Appellant's employer was seeking to arrange for Appellant.

Appellee states that its "parent (corporation) did receive part of the purchase price because of its contractual entitlement to reimbursement from undisclosed liabilities," infering that the 980 shares of stock of Corn Products were transferred for general purpose when in fact, as the record shows, they were transferred for and only for the funding of Plaintiff's pension.

The "whereas clause" of the contract between RS&S Liquidating Corporation and Corn Products (JA 14), unmistakably describes and identifies Appellant as the officer for whose retirement pension the contract was being made in the following language:

> "Whereas a claim has been made by an officer of both corporations based on his exclusion from the retirement provisions for all officers and employees of both corporations."

Also it should be pointed out that on page 3 under "SUMMARY OF ARGUMENT," the statement is repeated that Appellee received no benefit when in fact it received, as the record shows, a valuable tax deduction and the right to use up to 250 hours a year of Plaintiff's legal services without additional compensation, which right in fact was taken advantage of.

Rhode Island Hospital Trust Company v. *Rhode Island Covering Co., Inc.,* 190 Atl. 2nd 219, cited in Appellee's brief deserves only the comment that it was a suit brought to prevent a bank, a secured creditor of an insolvent, from collecting its full debt, on the ground that

it would thereby escape paying its share of the receivership expense. This, it was argued unsuccessfully, would constitute unjust enrichment. Neither that state of facts nor the decision is relevant to the issue of this case.

Herrman v. *Gleason,* 126 F.2d 936-940, cited in the discussion of unjust enrichment, in Appellee's brief, it should be pointed out, supports Appellant's contention. That opinion states:

> "Under the doctrine of unjust enrichment a defendant has something of value at Appellant's expense under circumstances which impose a legal duty of restitution." *American University* v. *Forbes,* 88 N.H. 17, 183 Atl. 860. See *Wilson Cyprus* v. *Atlantic Coastline R. Co.* (5th Cir., 109 F.2d 623). Ames *Lectures On Legal History,* pp. 149-166. Holdsworth's *History of English Law,* Vol. VIII, P. 92 et seq., Lawrence *Equity Jurisprudence,* Par. 738
>
> "A person is enriched if he has received benefit and when he has been unjustly enriched at the expense of another is required to make restitution." See *Restatement of the Law.* 1 Restitution.

In This Case Corn Products and Appellee, Received Services Plus the C. P. Stock Which, Without the Increase in Value, Was Enough To Pay Appellant's Pension Proving That Appellee and Corn Products Have Been Unjustly Enriched Under the Circumstances Shown in This Record.

Appellant's brief not only leaves the three "genuine issues" listed in Appellant's brief, unsettled but its confusing and inaccurate statements of alleged facts based only on the unsworn statements of counsel raise many more.

It is submitted that the order of the District Court granting Summary Judgment should be reversed.

J. Sterling Halstead
Appellant Pro Se.

U. S. TREASURY DEPARTMENT
WASHINGTON 25

OFFICE OF
COMMISSIONER OF INTERNAL REVENUE

ADDRESS REPLY TO
COMMISSIONER OF INTERNAL REVENUE
WASHINGTON 25, D. C.
AND REFER TO
T:R:C
LJO

SEP 3 1958

Refined Syrups & Sugars, Inc.
Foot of Vark Street
Yonkers, New York

Gentlemen:

This is in reply to your letter of August 7, 1958 requesting a ruling concerning the deductibility, for Federal income tax purposes, of compensation payments payable to an individual under a proposed agreement with him, under the circumstances therein described.

The factual statements contained in your letter, with the enclosures, relative to the transaction involved disclose that on March 15, 1957 all of the assets of Refined Syrups & Sugars, Inc., a New York corporation (hereinafter referred to as RSS), inclusive of the capital stock of two wholly-owned subsidiary companies, were transferred to Corn Products Refining Company, New York, New York, (hereinafter referred to as CP) in a nontaxable exchange, under section 368(a)(1)(C) of the Internal Revenue Code of 1954, for 128,288 shares of its common stock, together with the assumption by CP of the liabilities and obligations of RSS as specified on pages 1 and 2 of the "Acquisition Agreement" dated January 21, 1957. Your corporation, organized under the laws of Ohio, (hereinafter referred to as ORSS) was one of the two subsidiaries of RSS. Thereupon, the same assets, except the capital stock of the subsidiary corporations owned by RSS, and advances or accounts receivable due from them, and the patents, trade names, and trade-marks of RSS were conveyed by CP to ORSS as contributions to its capital, with ORSS assuming the same liabilities which CP had assumed from RSS, except loans owing to Metropolitan Life Insurance Company and Manufacturers Trust Company. As an operating subsidiary of CP, ORSS has combined its business operations with those of RSS.

All of the officers and salaried employees of RSS were taken over by ORSS, but soon thereafter, in September 1957, it requested Mr. J. S. Halstead, who had served both companies over many years, to discontinue his services as Secretary and General Counsel. The officers and salaried employees of both

companies, except Mr. Halstead, were covered under a Retirement Plan which ORSS continued in effect. Upon being advised of the discontinuance, Mr. Halstead, upon severing his services with ORSS on March 31, 1958, presented a claim to that company for retirement and severance benefits similar to those which applied to the said officers and employees under its Retirement Plan. Negotiations thereunder have resulted in a proposed settlement between Mr. Halstead and ORSS, as reflected in a copy of Agreement submitted with the application for a ruling (Exhibit A), the contents of which have been agreed upon fully, but the formal signing has been deferred pending the outcome of the ruling requested. The principal provision covered therein is that ORSS will have undertaken to engage the services of Mr. Halstead on a retainer basis at the rate of $12,000 per annum, payable monthly, beginning at April 1, 1958 for a period of nine years.

Upon the filing of the claim by Mr. Halstead with ORSS, demand was made by CP of RSS for an adjustment of the capital stock shares paid under the warranty provisions of the original merger agreement by which a portion thereof would be transferred back from RSS. Negotiations thereon have resulted in a tentative agreement being reached which calls for this adjustment, which agreement is expected to be formalized. The income tax consequences of such pending adjustment were covered in a ruling issued under date of July 14, 1958 (T:R:R-BMA) in which it was held that gain or loss will not result therefrom either to RSS, to the stockholders of RSS, or to CP.

Under the provisions of the proposed agreement between ORSS and Mr. Halstead, a liability will be incurred by ORSS for the payment of the said compensation to Mr. Halstead on an annual basis in consideration for the rendition of services by him over the nine-year period. Such agreement is construed as being separate and distinct from the aforementioned transaction consummated under date of March 15, 1957 between CP and RSS, as well as upon the forthcoming adjustment of the number of shares of capital stock passing between them thereunder, inasmuch as ORSS was not a party thereto or directly affected thereby. The indicated liability involves an annual expense of $12,000, ordinary and necessary to ORSS in carrying on its trade or business, as contemplated under the provisions of section 162(a) of the Internal Revenue Code of 1954 and section 1.162-7 of the Income Tax Regulations thereunder, the amount of which is accruable on the corporate records. Consistent therewith, a deduction is allowable for such expense in the taxable year or years in which paid or incurred, depending upon the method of accounting employed, provided that the amount thereof is determined to be reasonable and covers services actually rendered.

Very truly yours,

T Featherstun

Chief, Corporation Tax Branch

In the

UNITED STATES COURT OF APPEALS

for the

District of Columbia Circuit

No.21,160

Petition for Rehearing

J.Sterling Halstead, Appellant herein, respectfully represents to the Court as follows:

1 As the 980 shares of the stock of Corn Products were retransferred to provide funds which were to be used to pay Appellant's pension and Appellee has recognized and adopted the contract of Sept. 15 1954, made by Corn Products for its benefit and has paid Appellant pension up to March 1,1967, it is estopped now to contend it is not liable, with Corn Products, to carry out the terms of said pension agreement or contradict the terms of said agreement.

2.Appellant does not seek to contradict, vary or dispute the terms of the contracts referred to in the Court's opinion but only to insist that he receive the full benefit of the 980 shares of Corn Products stock, retransferred by his former employer to provide a pension for him, including the part of that trust fund which represents unjust enrichment.

3.Appellee failed to cite any authorities rebutting or raising

any doubt as to the soundness of the following authorities defining and sustaining claims of " unjust enrichment"citedby Appellant:

89Corpus Juris Secundum,page 1027
Beatty v.Guggenheim,225 N.Y.180
Grand Trunk etc,Rwy.v Chicago etc.Rwy 131Fed.2d,215,

also, Herrman V Gleason,126 F.2d.936-940, cited by Appelleee.

Appellee has also ignored entirely , the following cases holding that the Statute of Limitations is not now and never has been held applicable to cases in equity in the District of Columbia:

Peters v. Sutter, 2 MacArthur (D.C. Sept 1876,)
Halliday v.Halliday 56 App.D.C. 179 (1926).

Appelleehas also refused to recognize that Appellant's right of action did not arise until the increase in the value of Corn Products stock became substantial and that Appellant acted as soon as the Appellee's default determined the exact amount of Appellees claim.

Appellee's failure to recognize the real issues presented in this case seeks to hide the fact under these decisions the 980 shares of Corn Products stock, contributed to provide a pension for an employee, by a former employer, is a basis for imposing a constructive trust to prevent unjust enrichment, and,

Appellee's confused, inaccurate and unfounded statements, none of them sworn to or signed by anyone with personal knowledge of the facts stated, are intended to make the Court believe that the 980 shares of Corn Products stock were not actually re-transerred solely for the purpose of funding a pension for an employee otherwise entitled to a pension.

Appellant desires to point out in this connection that the contract of Sept.15,1954 mentioned by the Court as providing "indemnification" contains prior thereto,and as its principle "whereas clause" located on its 1st page,the following:

"whereas the claim has been made by an officer of both corporations, based on his exclusion from the retirement provisions for officers and employees of both corporations...."

Also relevant are the following quotes from the statement submitted to the U.S.Treas.Dept. in support of the R.S.& S Pension plan and the list of officers and employees of those corporations included in the plan by the Dept.,after Appellant's withdrawal from the Plan,to insure its prompt adoption.

" MEMORANDUM RE PARTICIPATION
J. STERLING HALSTEAD, GENERAL COUNSEL AND SECRETARY
IN RS&S PENSION PLAN

FACTS:

1. JSH employment as counsel began April 1, 1936.
2. Became Assistant Secretary of RS&S April 28, 1942.
3. Became Secretary on March 30, 1951.
4. Fixed annual compensation as of July, 1953, compensation payable by RS&S, payable monthly, $28,200.

Throughout the period, fixed compensation paid has been supplemented by additional amounts for particular legal cases and matters. In 1944 and several prior years, a total of $37,393 was paid

by RS&S for services in a tax case not covered by annual compensation. Additional compensation is paid on account for services rendered to The Dextran Corporation currently, at $600 a month in 1952, $650 a month in 1953, and a substantial additional amount is under discussion for 1950 and 1951. Other additional amounts payable from time to time for other services, fee of $3,500 paid in December, 1952, for work done on salary and wage stabilization problems.

5. As an officer of the corporation, JSH's status as an employee is fixed by express statutory enactment. See in this connection Federal Old Age Insurance, Title 42, U. S. C. Annotated, Section 401; I. R. C., Section 1426 (d) Employment Tax, which provides:

"The term 'employee' means

(1) any officer of a corporation."

See to the same effect Section 1607 (i), Title 42, U. S. C. A., Section 1101. See also Regulations 116, Section 405.104 and Dwecy Products Co. v. Welch, C. C. A., Massachusetts (1941), 124 F. Supp. 592.

A recent ruling on the subject of attorneys as participants in pension plans requires comment in this connection. Special Supplement No. 6 issued March 18, 1953, I. R. B. No. 6, 3-6-53, however, says:

"(b) (2) Attorney participants.—An attorney, or other professional person, may be a bona fide employee and, as such, eligible to participate in the plan. The mere fact that such practitioner also has an independent income from the practice of his profession will not necessarily preclude him from participating in the plan. He must, however, be an employee for all purposes, including coverage as an employee for social security or similar public program, if applicable to other employees, and for income tax withholding purposes. Thus, if his actual employment for such purposes commences as of a certain date he is not entitled to credit for services prior thereto, such as, for example, for the purpose of meeting the years of service requirement to be eligible to participate in the plan, or to be entitled to past service credits."

WHEREFORE, Appellant respectfully prays that he be granted a rehearing, pursuant to Rule 26 of the Rules of Practice of this Court,

J. Sterling Halstead
Appellant, Pro Se.

Certificate

I, J.Sterling Halstead, Appellant in the above entitled Appeal, hereby certify that the foregoing Petition for Rehearing is filed in good faith and not fpr delay.

J. Sterling Halstead
Appellant, Pro Se

Certificate of Service

I hereby certify that a copy of theforegoing Petition for Rehearing was mailied mailed Postage Prepaid, addressed to Sheldon E.Bernstein, 818 18th Street,N.W. Washington,D.C. 20006

J. Sterling Halstead